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United States

1639

Circuit Court of Appeals

For the Ninth Circuit.

GLOBE AND RUTGERS FIRE INSURANCE
COMPANY, a Corporation,

Appellant,

vs.

JOHN SKANSI,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Western District of Washington,
Southern Division.

FILED

AUG 21 1929

PAUL P. O'BRIEN,
CLERK

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

HOWARD G. COSGROVE, ROBERT S. TER-
HUNE, Smith Tower, Seattle, Washington.
Attorneys for Appellant.

C. O. BATES, CHARLES T. PETERSON, Wash-
ington Building, Tacoma, Washington.
Attorneys for Appellee. [1*]

In the Superior Court of the State of Washington
in and for Pierce County.

JOHN SKANSIE,

Plaintiff,

vs.

GLOBE AND RUTGERS FIRE INSURANCE
COMPANY,

Defendant.

AMENDED COMPLAINT (Cause No. 58,580).

Pursuant to an order of the Court heretofore
made in the above-entitled cause, plaintiff files this
his amended complaint, and for cause of action
against defendant, says:

I.

That defendant is and at the times hereinafter
mentioned was a foreign corporation engaged in
the general fire and marine insurance business,

*Page-number appearing at the foot of page of original certified
Transcript of Record.

maintaining an office and general agency in the city of Seattle, King County, Washington.

II.

That on the 16th day of March, 1925, plaintiff, John Skansi, was and during the times in this complaint mentioned continued to be the owner of the gas vessel "Companion" hereinafter referred to.

III.

That in the 17th day of February, 1925, plaintiff, John Skansi, entered into a charter-party by which he chartered and hired to A. & P. Products Corporation, said gas vessel "Companion" by the terms of which said A. & P. Products Corporation hired and chartered said [2] vessel until September 15th, 1925, a copy of which said charter-party is hereto attached, marked Exhibit "A" and made a part of this complaint by reference; that on March 16th, 1925, while said charter-party was in full force and effect, defendant issued to said A. & P. Products Corporation and John Skansi its certain policy of insurance, a copy of which is attached hereto, marked Exhibit "B" and made a part of this complaint by reference; that by said policy of insurance said parties were insured against certain hazards, among others being that of fire, in the sum of \$11,300.00, as will more fully appear from said policy of insurance, and said parties paid to defendant the required necessary premiums to continue and keep said policy of insurance in force until the 16th day of March, 1926.

IV.

That at all times during negotiations with reference to the procuring of the policy of insurance hereinbefore referred to, and at the time of the issuance of said policy, the defendant knew that the owner of said gas vessel was the plaintiff, John Skansi, and that the interest of the said A. & P. Products Corporation was that of a charterer only, and was fully advised and informed that it was the desire and intention of the plaintiff, John Skansi, and the said A. & P. Products Corporation that their respective interests should be protected by said policy, and that said policy should be written and issued in such form as to protect the respective interests of both of said parties, and said defendant was further advised and informed that it was the desire of the plaintiff, John Skansi, that such policy should also cover fishing operations in the waters of Puget [3] Sound so that the said plaintiff, John Skansi, would be protected in fishing said vessel in such waters subsequent to the expiration of his charter with said A. & P. Products Corporation, should he desire to do so.

V.

That on or about the 19th day of October, 1925, the plaintiff, John Skansi informed the defendant through its duly authorized and acting agents, Burgard-Sargent & Co., Inc., that his charter with the A. & P. Products Corporation had terminated, and that said vessel had been returned to the waters of Puget Sound, and that it was his desire and intention to use and operate said vessel for fishing

purposes in the waters of Puget Sound, and then and there requested the defendant so to change and modify its said policy that he, the said John Skansi, would be insured and covered under the terms thereof while operating said gas vessel "Companion" as a cannery tender and fishing vessel in the said waters of Puget Sound.

VI.

That the defendant at the time of the request for the modification of said policy as aforesaid, admitted its agreement to modify said policy as aforesaid, and then and thereupon agreed so to do and agreed that said policy should be made to insure the interests, cover the operations of the plaintiff, John Skansi, in the waters of Puget Sound during the remainder of the term of said policy, and agreed forthwith to issue a rider to said policy embodying the agreement between said parties as aforesaid.

VII.

That notwithstanding the knowledge and agreements of the defendant as aforesaid, said defendant at the time of the issuance [4] of the rider to said policy hereinabove referred to, by oversight, inadvertence and mistake as plaintiffs believe, failed and neglected to describe the plaintiff, John Skansi, as the beneficiary under said policy, although it was the intention of the plaintiff and said defendant that he should be described as beneficiary thereunder, as his respective interest should appear.

VIII.

That the insured paid the full premium called for by said policy, the said A. & P. Products Corporation paying an amount proportionate to the time that its use of said vessel bore to the entire term of said policy, and the plaintiff, John Skansi, paying that portion of the premium proportionate to the remainder of said term of said policy.

IX.

That on the 30th day of December, 1925, and while said policy and the rider thereto attached were in full force and while said vessel was being used in conformity with the terms and conditions of said policy, the said gas vessel "Companion" was entirely consumed and destroyed by unavoidable fire in the waters of Puget Sound near Gig Harbor, Pierce County Washington.

X.

That said loss was duly protested and notice thereof given to defendant within the terms of said policy, a copy of which said note of protest is hereto attached, marked Exhibit "E" and made a part of this complaint by reference.

WHEREFORE, plaintiff prays that said policy and endorsement thereon may be reformed to cover the interest of John Skansi, in [5] said gas vessel "Companion" at the time of said loss.

Plaintiff prays that upon said policy so reformed, he have judgment against defendant in the sum of eleven thousand three hundred dollars (\$11,300.00), with interest thereon from December 30th, 1925,

together with costs of suit, and that plaintiff have such other, further or different relief in the premises as the nature of the case may require and equity demand.

BATES & PETERSON,
Attorneys for Plaintiff,
1101 Washington Building, Tacoma, Washington.

State of Washington,
County of Pierce,—ss.

John Skansi, being first duly sworn, on oath deposes and says: That he is one of the plaintiffs in the above-entitled action; that he has read the foregoing amended complaint, knows the contents thereof, and believes the same to be true.

JOHN SKANSI.

Subscribed and sworn to before me this 3d day of May, A. D. 1927.

SALVI A. GAGLIARDI,
Notary Public in and for the State of Washington,
Residing at Tacoma. [6]

EXHIBIT "A."

CHARTER PARTY.

THIS AGREEMENT made and entered into this 17th day of February, 1925, by and between John Skansi, hereinafter termed Owner and THE A. & P. PRODUCTS CORPORATION, a corporation organized and existing under and by virtue of the laws of the State of New York, hereinafter termed charterer.

WITNESSETH:

The Owner warranting that he is the owner of that certain gas screw vessel named "COMPANION" of the type known as a cannery tender, 64 feet long, 15.6 foot beam, and 60 Horse Power gas engine, hereby agrees to let said vessel to said Charterer, and said Charterer agreed to hire the same from the Owner, pursuant to the following provisions:

1. The term of said charter shall be from June 1st, 1925, to September 15th, 1925.

2. Said vessel shall be delivered at the commencement of said term by the Ocean Coast Fish Company to the Charterer at Union Bay Cannery, Alaska.

3. Said vessel shall be delivered fully provided with all equipment, machinery, apparel, furniture and appliances customary for a vessel employed as a cannery tender in the Alaska salmon fisheries, all in good condition and in complete state of readiness for the operation of said vessel as such cannery tender, and in conformity with all government rules, laws and regulations pertinent thereto, and staunch, strong and seaworthy. [7]

4. The Charterer shall accept and pay for all proper fuel and supplies for said vessel aboard of her when delivered at the commencement of the term of this charter at the current market prices therefor at the place of delivery, and the Owner shall at the end of said term pay for all such fuel and supplies aboard at the time of re-delivery at the same prices.

5. The Charterer shall pay as hire for said vessel for said term from June 1st, 1925, to September 15th, 1925, the sum of TWENTY FIVE HUNDRED (2500.00) DOLLARS, which sum shall be paid as follows:

\$700.00 March 15th

\$1000.00 August 1st

Balance at end of season

6. The Charterer shall select and pay wages for all officers and crew, and shall bear all expenses for fuel and supplies for said vessel during the term of this charter.

7. The Charterer shall pay the premium for full marine insurance covering the term of said charter to the extent of TEN THOUSAND (\$10,000.00) DOLLARS and shall not be liable for any risk insured against.

8. The Charterer warrants that it will not permit any liens or charges to accrue against said vessel for labor or supplies furnished to said vessel during the term of this Charter.

9. The Charterer shall have full and absolute control and management of said vessel at all times during its charter thereof, and may operate her in any waters and in any manner not contrary to law nor the provision hereof. [8]

10. Re-delivery of said vessel shall be made by the Charterer to the Owner at Seattle, Washington, in as good condition as she is received, natural wear and tear, the Act of God or the enemies of the United States excepted.

IN WITNESS WHEREOF said parties have caused this instrument to be executed in duplicate on the day and year first above written.

JOHN SKANSI, Owner.

THE A. & P. PRODUCTS CORPORATION.

By W. J. FRIELE,

Its General Manager, Charterer. [9]

EXHIBIT "B."

1925.

PACIFIC MOTOR VESSEL.

Attached to Policy No. 10403 of GLOBE & RUTGERS FIRE INSURANCE COMPANY, per Gas Vessel "COMPANION," dated March 16th, 1925.

1. And it is further agreed that if the Ship hereby Insured shall come into collision with any other Ship or Vessel, and the Assured or Charterers shall in consequence thereof become liable to pay and shall pay by way of damages to any other person or persons any sum or sums in respect of such collision, this Company will pay the Assured or Charterers such proportion of such sum or sums so paid as its subscription hereto bears to the value of the Ship hereby Insured, provided always that its liability in respect of any one such collision shall not exceed its proportionate part of the value of the ship hereby insured; and in cases in which the liability of the Ship has been contested, or proceedings have been taken to limit liability, with the consent in writing of a majority of the underwriters on the hull and machinery (in amount), this Company will

also pay a like proportion of the costs which the Assured or Charterers shall thereby incur, or be compelled to pay; but when both Vessels are to blame, then unless the liability of the Owners or Charterers of one or both of such Vessels becomes limited by law, claims under this clause shall be settled on the principle of cross-liabilities as if the Owners or Charterers of each Vessel had been compelled to pay to the Owners or Charterers of the other of such Vessels such one-half or other proportion of the latter's damages as may have been properly allowed in ascertaining the balance or sum payable by or to the Assured or Charterers in consequence of such collision.

2. Provided always that this Clause shall in no case extend to any sum which the assured or charterers may become liable to pay, or shall pay for removal of obstructions under statutory powers, for injury to harbours, wharves, piers, stages, and similar structures, consequent on such collision; or in respect to the Cargo or engagements of the Insured Vessel, or for loss of life or personal injury.

3. Should the Vessel hereby insured come into collision with or receive salvage services from another Vessel belonging wholly or in part to the same Owners or Charterers, or under the same management, the Assured or Charterers shall have the same rights under this policy as they would have were the other Vessel entirely the property of owners not interested in the Vessel hereby insured; but in such cases the liability for the collision or the amount payable for the services rendered, shall

be referred to a sole arbitrator to be agreed upon between the underwriters and the Assured or Charterers.

4. Provided that in the event of any claim being made by Charterers under the above clauses, they shall not be entitled to recover in respect of any liability to which the Owners of the Ship, if interested in this Policy, at the time of the collision in question, would not be subject, nor to a greater extent than the shipowners would be entitled in such event to recover. [10]

5. In port and at sea, in docks, and graving docks, and on ways, gridirons and pontoons, at all times, in all places, and on all occasions, services and trades whatsoever and wheresoever, under steam or sail, with leave to sail with or without pilots, to tow and assist vessels or craft in all situations, and to be towed and to go on trial trips.

6. Should the Vessel at the expiration of this policy be at sea, or in distress, or at a port of refuge or of call, she shall, provided previous notice be given to the underwriters, be held covered at a *pro rata* monthly premium, to her port of destination.

7. Should the Vessel be sold or transferred to new management, then, unless the underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port or is at sea on ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of

destination if in ballast. A *pro rata* daily return of premium shall be made.

8. Any deviation beyond the limits named herein shall render this Policy void only during the time the vessel is outside the said limits and upon the safe return of the vessel within such limits in sound condition this policy shall reattach in full force and effect.

9. Notwithstanding anything to the contrary contained in the contract of affreightment, general average and salvage shall be adjusted so far as concerns the liability of these insurers under this policy according to the law and practice obtaining at the place where the adventure ends, except only that if the contract of affreightment provides for adjustment according to the York-Antwerp Rules, then rules 1 to 17, both inclusive, shall control as to all matters referred to therein, and subject to any express provision in this policy where the Assured is liable for and has paid any general average contribution and the contributory value is greater than the insured value, the amount recoverable under this Policy shall be only in the proportion that the amount insured hereunder bears to the contributory value and where the contributory value has been reduced by a particular average for which these Assurers are liable, the amount of particular average claim under this policy shall be deducted from the amount insured under this Policy in order to ascertain what share of the contribution is recoverable from these Assurers; The extent of the liability of these Assurers for salvage shall be computed on the same principle.

10. In the event of the expenditures for Salvage, Salvage Charges, or under the Sue and Labour Clause, this Policy shall only be liable for its share of such proportion of the amount chargeable to the property hereby insured as the insured value, less loss and/or damage, if any, for which the insurer is liable, bears to the value of the salvaged property.

Provided that where there are no proceeds or there are expenses in excess of the proceeds, the expenses, or the excess of the expenses, as the case may be, shall be apportioned upon the basis of the sound value of the property at the time of the accident, and this policy without any deduction for loss and/or damage shall bear its *pro rata* share of such expenses or excess of expenses accordingly.

[11]

Average payable on each valuation separately or on the whole, without deduction of thirds, new for old whether the average be particular or general.

Donkey boilers, winches, cranes, windlasses, steering gear, and electric light apparatus shall be deemed to be part of the hull, and not part of the machinery. Refrigerating machinery and insulation not covered unless expressly included in this Policy.

Warranted free from particular average under 3% but nevertheless, when the Vessel shall have been stranded, sunk, on fire, or in collision with any other Ship or Vessel, Underwriters shall pay the damage occasioned thereby, and the expense of sighting the bottom after stranding shall be paid if reasonably incurred, even if no damage be found.

From the cost of cleaning and painting the bottom of a vessel, (exclusive of dry-dock charges) recoverable in average, there shall be deducted one-twelfth for every month since the Vessel was last painted, but no allowance shall be made for cleaning and painting on account of exposure to air unless the Vessel has been more than twenty-four hours on the dock.

The warranty and conditions as to average under 3% to be applicable to each voyage as if separately insured, and a voyage shall be deemed to commence at one of the following periods to be selected by the Assured when making up the claim, viz.: at any time at which the vessel (1) begins to load cargo or (2) sails in ballast to a loading port. Such voyage shall be deemed to continue during the ensuing period until either she has made one outward and one homeward passage (including an intermediate ballast passage if made) or has carried and discharged two cargoes whichever may first happen, and further, in either case, until she begins to load a subsequent cargo or sails in ballast for a loading port. When the Vessel sails in ballast to effect damage repair such sailing shall not be deemed to be a sailing for a loading port although she loads at the repairing port. In calculating the 3% above referred to, particular average occurring outside the period covered by this Policy may be added to particular average occurring within such period provided it occur upon the same voyage (as above defined), but only that portion of the claim arising within such period shall be re-

coverable hereon. The commencement of a voyage shall not be so fixed as to overlap another voyage on which a claim is made on this or the preceding Policy.

In no case shall Underwriters be liable for unrepaired damage in addition to a subsequent total loss sustained during the term covered by this Policy.

In ascertaining whether the Vessel is a constructive total loss the insured value shall be taken as the repaired value, and nothing in respect of the damaged or break-up value of the Vessel or wreck shall be taken into account.

In the event of accident whereby loss or damage may result in a claim under this Policy, notice shall be given in writing to the Underwriters, where practicable, prior to survey, so that they may appoint their own Surveyor if they so desired; and whenever the extent of the damage is ascertainable, the majority (in amount) of the [12] Underwriters may take or may require the Assured to take tenders for the repair of such damage. In cases where a tender is accepted by or with the approval of underwriters, the Underwriters will make an allowance at the rate of 30 per cent per annum on the insured value for the time actually lost in waiting for tenders. In the event of the Assured failing to comply with the conditions of this Clause, 15 per cent shall be deducted from the amount of the ascertained claim.

Warranted that this company shall not be liable

for loss of or damage to fishing tackle, nets or dories.

Should the Vessel be laid up in Bering Sea or adjacent waters north of Unimak Pass, warranted hauled out on ways during entire period laid up.

Provided notice be given in writing when Vessel is laid up and when Vessel goes into commission, at the expiration of this Policy to return 18- $\frac{3}{4}$ ¢ per cent net for every thirty consecutive days the Vessel may be laid up in port out of commission and not under average (provided that no return be made for any thirty-day period in which an accident happens for which claim is made on Underwriters or during which repairs for Underwriters' account are effected). Either party may cancel this policy by giving 10 days notice in writing. If cancelled at request of Underwriters *pro rata* daily returns to be made. If cancelled at request of assured returns to be made on basis of standard short rate scale. In all cases of return of premium, in whole or in part ten per cent upon the return premium is to be retained by the Insurers, unless otherwise provided, but no returns whatsoever to be paid in case of loss of the Vessel.

It is agreed that these clauses shall be considered to supersede and annul any clauses to the same or similar effect printed in or attached to this policy, and that for the purpose of construction these clauses shall be deemed of the nature of written additions thereto.

Notwithstanding the foregoing this policy is:

- (a) Warranted free from liability in general average for deck cargo jettisoned.

- (b) Warranted free of claim for towage liability.
- (c) IT IS ALSO AGREED that this Vessel be warranted by the Assured free from loss or damage arising from riot, civil commotion, capture, seizure or detention, or from any attempt thereat, or the consequences thereof, or the direct or remote consequences of any hostilities, arising from the acts of any government, people or persons whatsoever (ordinary piracy excepted), whether on account of any illicit or prohibited trade, or any trade in articles contraband of war, or the violation of any port regulation or otherwise. Also free from loss or damage resulting from measures or operations incident to war, whether before or after the declaration thereof.
- (d) Warranted to be subject to English law and usage as to liability for and settlement of any and all claims. [13]

During the currency of this policy warranted employed as a cannery tender and/or fishing vessel.

This insurance also specially to cover (subject to the fee of average warranty) loss of, or damage to hull or machinery directly caused by accidents in loading, discharging or handling cargo, or caused through the negligence of Master, Charterers, Mariners, Engineers, or Pilots, or through explosion, bursting of boilers, breakage of shafts, or through any latent defect in the machinery or hull provided such loss or damage has not resulted from want of

due diligence by the owners of the Ship; or any of them, or by the Manager. Masters, Mates, Engineers, Pilots, or Crew not to be considered as part owners within the meaning of this clause should they hold shares in the steamer.

Warranted confined during the currency of this policy to the waters of Southeastern Alaska, not north of Skagway nor west of Cape Spencer, with privilege of making one round trip between Seattle, Wash. and policy limits.

No. 10403 HULL-ENGLISH FORM \$11,300.00
THE

GLOBE & RUTGERS FIRE INSURANCE COM-
PANY INCORPORATED
OF THE CITY OF NEW YORK
PACIFIC COAST DEPARTMENT
EDW. BROWN & SONS, MANAGERS.

THE A. & P. PRODUCTS CORPORATION,
on account of SAME

In case of loss, to be paid in funds current in the United States to ASSURED OR ORDER

Does make Insurance and cause ELEVEN THOUSAND THREE HUNDRED DOLLARS to be insured

At and from March 16th, 1925, Noon, Pacific Standard Time To — March 16th, 1926, Noon, Pacific Standard Time.

As employment may offer, in port and at sea, in docks and graving docks, and on ways, gridirons and pontoons, at all times, in all places and on all

occasions, services and trades whatsoever and where-soever, under steam or sail, under the Body, Tackle, Apparel, Ordinance, Munitions, Artillery, Boat and other Furniture of and in the good

GAS VESSEL called the "COMPANION" or by whatsoever other name or names the said ship is or shall be named or called, beginning the adventure upon the said ship, etc., as above, and shall so continue and endure during the period as aforesaid. Should the above vessel be at sea on the expiration of this Policy, it is agreed to hold her covered until arrival at port of destination on her being moored therein twenty-four [14] hours in good safety (provided that before the expiration the Assured shall have given notice of intention to so continue at a *pro rata* monthly premium, and it shall be lawful for the said ship, etc., to proceed and sail to and touch and stay at any Ports and Places whatsoever and wheresoever without prejudice to this insurance. The said ship, etc., for so much as concerns the assured, by agreement between the Assured and Assureds in this Policy are and shall be value at as follows:

Hull, Tackle, Apparel and Furniture,	
Machinery and Boilers.....	\$12,000.00
TWELVE THOUSAND	

TOUCHING the Adventures and Perils which we, the said insurers, are contented to bear and take upon us, they are of the Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Thieves, Jettisons, Letters of Mart and Countermart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all

Kings, Princes and People, of what Nation, Condition or Quality soever, Barratry of the Master and Mariners, and of all other Perils, Losses and Misfortunes that have or shall come to the Hurt, Detriment or Damage of the said ship, etc., or any part thereof; and in case of any Loss or Misfortune, it shall be lawful to the insured, their Factors, Servants and Assigns, to sue, labor and travel for, in and about the Defense, Safeguard and Recovery of the said Ship, etc., or any part thereof, without prejudice to this Insurance; to the charges whereof of the said Insurance Company will contribute according to the Rate and Quantity of the sum herein insured. And it is specially declared and agreed that no acts of the insurer or insured in recovering, saving or preserving the property insured shall be considered as a waiver or acceptance of abandonment; having been paid the consideration for this Insurance, by the Insured or his or their Assigns, at and after the rate of FIVE AND ONE-HALF per cent, to return — per cent for every 30 consecutive days the vessel may be laid up in port or in dock; during such period the vessel being at the risk of the Insurers—to return *pro rata* premium for every 30 days of unexpired time, if this Policy be cancelled and arrival.

Free from average under THREE per cent unless general or the ship be stranded, sunk or burnt, on fire or in collision with another ship or vessel.

This insurance is understood and agreed to be subject to English law and usage as to Liability for and settlement of any and all claims.

With leave to sail with or without Pilots, to tow and assist vessels and craft in all situations, and to be towed and to go on trial trips. With liberty to discharge, exchange and take on board goods, specie, passengers and stores, wherever the vessel may call at or proceed to, without being deemed a deviation, and with liberty to carry goods, live cattle, etc., on deck or otherwise, but warranted free from any claims in respect of jettison of cattle or goods carried on deck. Average payable on each valuation separately, or on the whole. Each voyage to be subject to separate average. In event of damage, cost of repairs to be paid without deduction of one-third, whether the average be particular or general. General average payable as per foreign custom, if required, or per York-Antwerp Rules, if in accordance with the contract of affreightment.

[15]

Should the Vessel be sold or transferred to new management, then, unless the Underwriters agree in writing to such sale or transfer, this Policy shall thereupon become cancelled from date of sale or transfer, unless the Vessel has cargo on board and has already sailed from her loading port or is at sea in ballast, in either of which cases such cancellation shall be suspended until arrival at final port of discharge if with cargo, or at port of destination if in ballast. A *pro rata* daily return of premium shall be made.

In Witness Whereof the undersigned, on behalf of THE GLOBE & RUTGERS FIRE INSURANCE COMPANY, have hereunto set their hands

in San Francisco, State of California, this 21st day of March, 1925.

EDWARD BROWN & SONS,

Managers.

J. R. F. LEWDES,

Manager Marine Department.

Not Valid unless countersigned by BURGARD SARGENT & CO., Agents At Seattle, Washington.

Countersigned at Seattle, Wn., this 21st day of March, 1925.

By BURGARD-SARGENT & CO.,

Agents.

C. P. SARGENT,

Sec'y-Treas.

Warranted free of capture, seizure and detention and the consequences thereof or of any attempt thereat, piracy excepted, and also from all consequences of riots, civil commotions, hostilities or warlike operations, whether before or after declaration of war.

Warranted free of loss or damage caused by strikers, locked-out workmen or persons taking part in labor disturbances or riots or civil commotions.

It is agreed that, if the vessel hereby insured shall come into collision with any other vessel, and the insured shall in consequence thereof become liable to pay, and shall pay any sums not exceeding the value of the vessel hereby insured, in respect of injury to such other vessel itself, or to the goods and effects on board thereof, or for loss of freight then being earned upon such goods by such other vessel the insurers will pay the insured such proportion of

three-fourths parts of said sums as the amount hereby insured bears to the value of the vessel hereby insured, (but not exceeding in any event the amount of this policy). But this agreement is in no case to be construed as extending to any sums which the insured may become liable to pay, or shall pay in respect of loss of life or personal injury to individuals from any cause whatsoever.
[16]

EXHIBIT "E."

EXTENDED NOTE OF PROTEST.

UNITED STATES OF AMERICA.

State of Washington,
County of King,—ss.

To All People Whom These Presents Shall or may Concern: I, Wilbur E. Dow, a Notary Public in and for the State of Washington and County of King Aforesaid, by Letters Patent, Under the Great Seal of the Said State, Duly Commissioned and Sworn, Dwelling in the City of Seattle, Send GREETING:

KNOW YE, that on this 26th day of January, A. D., 1926, before me, the said Notary, at my office in the City of Seattle, personally appeared Nick Skansi, Master of the American gas screw "Companion," belonging to the Port of Tacoma, Washington, owned by John Skansi, who being by me duly sworn on the Holy Evangelists of Almighty God, voluntarily and solemnly did declare and depose as follows, to-wit: That he, the said appearer,

on the 30th day of December, 1925, at about 4 P. M., set sail and departed in and with the said vessel from Seattle, Washington, the vessel being in ballast, bound for Gig Harbor, Washington, the said vessel being then stout, stanch and strong, well masted, manned, tackled, victualed, appareled and appointed, and in every respect fit for sea and the voyage she was about to undertake; that the weather was fair, no wind, and tide ebbing; all went well until about 6 P. M., when we were about a mile off the north side of Richmond Point, West Pass; as the fire in the heater was about out, I put in some coal and when it would not burn I picked up what I thought was the five-gallon can in which we kept coal oil, and poured it in the stove; instead of coal oil, the contents were evidently gasoline as it immediately caused an explosion which blew out the stove, fired my clothes and knocked me up against the steps leading from the forecandle; I managed to stumble to the deck and my engineer, Art Power, grabbed a blanket and smothered the flames [17] on my clothes; he then rushed to the engine-room and stopped the engine, and tried to extinguish the fire with the extinguishers, but it had gained too much headway and we were compelled to launch the small boat and pull off; by this time the engine-room and forecandle were all ablaze; we rowed for about twenty minutes in the small boat until we were picked up by Captain Peterson of the fishing boat "Ibsen," which took us to Tacoma, and I was immediately taken to the St. Joseph Hospital as I was very seriously burned; my engineer got

the fishing boat "Bellingham" to look for the "Companion," but they were unable to locate her in the dense fog; on January 1st she was found beached on the south side of the Cove, Vashon Island, but there was nothing left except part of the stern and there was no salvage;

AND THE SAID APPEARER FURTHER DECLARES, that as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said Vessel has been occasioned solely by the circumstances hereinbefore stated, and cannot or ought not to be attributed to any insufficiency of the said vessel, the neglect or default of him, this deponent, his officers or crew; He now requires me, the said Notary, to make his protest and this public act thereof, that the same may serve and be of full force and value, as of right shall appertain. And thereupon the said Master Protested, and I, the said Notary, at his special instance and request, did, as by these presents I now do, publicly and solemnly PROTEST against winds, weather and seas, and against all and every accident, matter and thing, had and met with as aforesaid, whereby or by means whereof the said Vessel already has, or hereafter shall have suffered or sustained loss, damage or injury, and for all losses, costs, charges, expenses, damages and injury, which the said Vessel, or the owner or owners of the said vessel, or any other person or persons interested or concerned in [18] either, already have been or may hereafter be called upon to pay, sustain, incur or be put unto, by or on account of the

premises, or for which the insurer or insurers of the said Vessel is or are respectively liable to pay or make contributions or average according to custom, on their respective contracts or obligations, so that no part of any losses, damages, injuries or expenses already incurred, or hereafter to be incurred, do fall on him, the said Master, his officers or crew.

THIS DONE AND PROTESTED in the City of Seattle, State of Washington, this 26th day of January, A. D., 1926.

IN TESTIMONY WHEREOF, as well as the said appearer, as I, the Notary, have subscribed these presents, and I have also caused my Seal of office to be hereunto affixed, the day and year above written.

(Signed) NICK SKANSI,
Master.

[Notary Seal]

(Signed) WILBUR E. DOW,
Notary Public.

State of Washington,
County of King,—ss.

I, the undersigned Notary Public, hereby certify that the foregoing Act of Protest to be an accurate and faithful copy of the original on record in my book of official acts.

In *testimonium veritatis*.

[Notary Seal]

(Signed) WILBUR E. DOW,
Notary Public.

State of Washington,
County of King,—ss.

I, Lorene Brown, a Notary Public in and for the State of Washington, residing at Seattle, do hereby certify that I have carefully compared the within copy of Protest with the original on file in the office of Wilbur E. Dow Co. Inc., Seattle, Wash., and find the same to be a true and correct copy thereof.

LORENE BROWN,

Notary Public in and for the State of Washington,
Residing at Seattle.

March 12, 1926. [19]

[Indorsed]: Filed in the United States District Court, Western District of Washington, Southern Division, Jul. 1, 1927. Ed. M. Lakin, Clerk. By E. Redmayne, Deputy. [20]

ORDER OF REMOVAL (Cause No. 58,580).

This cause coming regularly on for hearing before the undersigned Judge, on the petition and bond of defendant herein for an order transferring this cause to the United States District Court, for the Western District of Washington, Southern Division, and it appearing to the Court that the defendant has filed its petition for such removal in due form of law, and that the defendant has filed its bond duly conditioned, with good and sufficient surety as provided by law, and that defendant has given plaintiff due and legal notice thereof,

and it appearing to the Court that this is a proper cause for removal to said District Court:

NOW, THEREFORE, said petition and bond are hereby accepted, and IT IS HEREBY ORDERED AND ADJUDGED that this cause be, and it hereby is removed to the United States District Court, for the Western District of Washington, Southern Division, and the Clerk is hereby directed to make up the record in said cause for transmission to said court forthwith.

Done in open court this 12th day of May, 1927.

F. J. REMANN,

Judge. [21]

[Indorsed]: Filed in Superior Court Pierce County, Wash., May 12, 1927. J. F. Libby, Clerk. By J. S., Deputy.

Entered Jour. 213, page 580.

Included with papers forming transcript of removal, filed in U. S. District Court May 17, 1927, and including under one cover:

Motion,

Demurrer,

Note of issue

Summons,

Complaint (with attached Exhibits "A," "B," "C," "D" and "E"),

Stipulation,

Order overruling and sustaining defendant's demurrer,

Notice of petition and bond, for order of removal,
Petition for removal,

Bond of removal,
Order of removal,
Certificate on removal to U. S. District Court,
and indorsed: Filed in the United States District
Court, Western District of Washington, Southern
Division, May 17, 1927. Ed M. Lakin, Clerk. By
E. Redmayne, Deputy. [22]

Docket Entry—Cause No. 6007.

MINUTES OF COURT—MAY 17, 1927—NO-
TICE OF FILING TRANSCRIPT ON RE-
MOVAL.

May 17, 1927.—Filed transcript on removal (from
Sup. Ct., Pierce Co.). [23]

Docket Entry—Cause No. 6007.

MINUTES OF COURT—JULY 1, 1927—NO-
TICE OF FILING OF STIPULATION RE
AMENDED COMPLAINT AND AMENDED
COMPLAINT.

July 1, 1927—Filed Stip. Ident. Amended Com-
plaint. Filed Amended Com-
plaint. [23-B]

ANSWER TO AMENDED COMPLAINT.

The defendant above named for answer to plain-
tiff's amended complaint, hereby denies and alleges
as follows:

I.

Answering Paragraph I of plaintiff's amended complaint, said defendant admits that at all the times hereinafter mentioned it was a foreign corporation engaged in the general fire and marine insurance business, but denies each and every other allegation in said paragraph contained.

II.

Answering Paragraph II of said amended complaint, defendant alleges that it has no knowledge, information or belief sufficient to enable it to answer any of the allegations in said paragraph contained, and therefore denies each and every one of said allegations.

III.

Answering Paragraph III of plaintiff's amended complaint, defendant admits that on March 16, 1925, it issued to the A. & P. Products Corporation its certain policy of insurance, a copy of which is attached to plaintiff's amended complaint marked Exhibit "B" and made a part thereof; it is further admitted that the said A. & P. Products Corporation paid to the said defendant the [24] premium due upon said policy; but defendant denies each and every other allegation in said paragraph contained.

IV.

Answering Paragraph IV of said amended complaint, the said defendant denies each and every allegation therein contained.

V.

Answering Paragraph V of said amended complaint, said defendant admits that on or about the 19th of October, 1925, said A. & P. Products Corporation requested an endorsement to said policy changing its trading limits, and that pursuant to said request the defendant issued the endorsement of October 19, 1925, which thereupon became a part of said policy; but defendant denies each and every other allegation in said paragraph contained.

VI.

Answering Paragraph VI of said amended complaint, said defendant admits that pursuant to the request for a change in the policy's stated trading limits (referred to in the preceding paragraph herein), the said defendant issued the endorsement of October 19, 1925, which thereupon became a part of said policy; but defendant denies each and every other allegation in said paragraph contained.

VI.

Answering Paragraph VII of said amended complaint, said defendant denies each and every allegation therein contained, and particularly does it deny that it was the understanding and agreement of the defendant that said insurance was for or on account of John Skansie, or to cover any interest of John Skansie, or that he should be described in said policy as a beneficiary thereunder as his interests might appear, or otherwise. It is further particularly denied that at the time of the issuance of [25] the policy, or at the time of

the issuance of said endorsement of October 19, 1925, the said John Skansie was not named as a beneficiary under said policy through oversight, inadvertence and mistake. Defendants on the contrary allege that said original policy and its endorsements were intended to be and were written to cover no interest of the said Jahn Skansie.

VIII.

Answering Paragraph VIII of said amended complaint, said defendant admits that the said A. & P. Products Corporation paid the full premium called for by said policy, but denies each and every other allegations therein contained.

IX.

Answering Paragraph IX of said amended complaint, said defendant admits that the said vessel was destroyed by fire in the waters of Puget Sound, near Gig Harbor, Pierce County, Washington, on the 30th day of December, 1925, but denies each and every other allegation therein contained.

X.

Answering Paragraph X of said amended complaint, the said defendant admits receiving copy of a note of protest, but denies each and every other allegation therein contained.

For a separate and affirmative defense, the said defendant alleges:

I.

That on the 30th day of December, 1925, the said vessel "Companion" sailed from Seattle, Wash-

ington, for Gig Harbor, Washington, but that at the commencement of said voyage and up to and at the time of her destruction by fire on the same day, she was unseaworthy as is hereinafter more particularly stated. Upon the beginning of said voyage the vessel had as a part of its equipment [26] a heater and a five-gallon coal-oil can. The latter had theretofore been used as a container for coal-oil, and the coal-oil had theretofore been used upon said vessel by being poured into said heater as an aid to the making of fires therein; that at the beginning of said voyage, and with the privity and knowledge of the owner of said vessel, whomever he might then have been, and with the privity and knowledge of the charterer of said vessel, whomever he or it might then have been, the said coal-oil can was not filled with coal-oil, but on the contrary was filled with gasoline, known to everyone to be highly inflammable and explosive gas; and that said can continued to be so filled with gasoline from the time of said sailing to the time of the said destruction of said vessel; that while on said voyage, and on said 30th day of December, 1925, the Master of said vessel, pursuant to the previous custom and practice followed upon said vessel, in order to obtain a fire in said heater, poured into the same some of the contents of said coal-oil can, whereupon said gasoline exploded and the vessel took fire, all of which resulted in the destruction of said vessel; that said fire was caused in such manner and by such means, and not otherwise.

WHEREFORE, said defendant prays that said action may be dismissed, and that it have its costs and disbursements herein.

COSGROVE & TERHUNE,
Attorneys for Defendant.

[Indorsed]: Filed Jun. 28, 1927. [27]

State of Washington,
County of King,—ss.

Howard G. Cosgrove, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the defendant in the above-entitled cause; that he has read the foregoing answer to amended complaint, and believes the same to be true; affiant further says that the said defendant is absent from and is a nonresident of the State of Washington, and affiant makes this affidavit for the reason that the said defendant is absent from and a nonresident of said state.

HOWARD G. COSGROVE,

Subscribed and sworn to before me this 22d day of June, 1927.

[Seal]

ROBERT S. TERHUNE,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Indorsed]: Filed Jun. 28, 1927. [28]

REPLY.

Comes now plaintiff and for reply to defendant's answer to amended complaint, hereby denies and alleges as follows:

I.

In replying to paragraph one of defendant's separate and affirmative defense, plaintiff admits that on the 30th day of December, A. D. 1925, the said vessel "Companion" sailed from Seattle, Washington, for Gig Harbor, Washington, and denies each and every other allegation therein contained; and particularly denies that the said vessel "Companion" was unseaworthy at the time of the commencement of said voyage, or at any time thereafter, as in said affirmative defense alleged.

WHEREFORE, plaintiff having fully replied to defendant's answer prays that he may have reformation and judgment as prayed for in his amended complaint.

BATES & PETERSON,
Attorneys for Plaintiff,
1101 Washington Building, Tacoma, Washington.

[29]

State of Washington,
County of Pierce,—ss.

John Skansi, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above-entitled action; that he has read the foregoing reply to defendant's answer to plaintiff's amended complaint, knows the contents thereof, and believes the same to be true.

JOHN SKANSI.

Subscribed and sworn to before me this 30th day of June, A. D. 1927.

SALVI A. GAGLIARDI,
Notary Public in and for the State of Washington,
Residing at Tacoma.

[Indorsed]: Filed Jul. 1, 1927. [30]

ORDER TO TRANSFER FROM LAW TO
EQUITY.

This cause coming on regularly, upon the motion of Cosgrove & Terhune, attorneys for the defendant in the above-entitled case, for the transfer of the above-entitled action from the law to the equity side of this court, and it appearing that said action is one primarily of equitable cognizance and that the equitable issues should be first tried:

IT IS THEREFORE CONSIDERED AND ORDERED by the Court that said cause be, and the same is hereby transferred from the law to the equity side of this court.

Done in open court this 21st day of June, 1927.

EDWARD E. CUSHMAN,
Judge.

The foregoing order may be entered without further notice.

BATES & PETERSON,
Attorneys for Plaintiff.

[Indorsed]: Filed Jun. 21, 1927. [31]

RULING DENYING DEFENDANT'S CHALLENGE TO THE SUFFICIENCY OF THE EVIDENCE AND MOTION TO DISMISS AND ORDER REFORMING POLICY OF INSURANCE.

This cause coming on regularly to be heard for trial on the 10th day of October, 1927, and thereafter continued from time to time, plaintiff appearing by Bates & Peterson, his attorneys, and the defendant appearing by Cosgrove & Terhune, its attorneys, and testimony having been taken upon the equitable issues of the case only (defendant's affirmative defense for the time being deferred), and both parties having concluded the introduction of testimony upon said equitable issues, and the defendant having thereupon challenged the sufficiency of the evidence and moved for a dismissal, and the Court having considered said motion, the same is denied, to which ruling the defendant excepts and the same is allowed.

Said equitable issues being submitted to the Court for decision, **IT IS THEREFORE ORDERED AND DECREED** that the policy of insurance referred to in plaintiff's complaint, be and the same is hereby reformed, making the plaintiff, John Skansi, an assured under said policy prior to and at the time of the destruction of the "Companion" December 30th, 1925.

Done in open court this 11th day of February, 1929.

EDWARD E. CUSHMAN,
Judge.

To the above order the defendant excepts, and the same is allowed.

EDWARD E. CUSHMAN,
Dist. Judge. [32]

[Indorsed]: Filed Feb. 11, 1929. [33]

STIPULATION WAIVING JURY.

It is hereby stipulated and agreed by and between the parties hereto, by their respective attorneys, that the remaining issues in this case may and shall be tried to the Court without a jury.

Dated this 11th day of February, 1929.

BATES & PETERSON,
Attorneys for Plaintiff.
COSGROVE & TERHUNE,
Attorneys for Defendant.

[Indorsed]: Filed Feb. 11, 1929. [34]

MEMORANDUM DECISION AFTER TRIAL
OF THE ISSUE AS TO PLAINTIFF'S
RIGHT TO HAVE POLICY OF INSUR-
ANCE REFORMED (Filed Dec. 21, 1928).

BATES & PETERSON, 1101 Washington Bldg.,
Tacoma, Wn., Attorneys for Plaintiff,

COSGROVE & TERHUNE, 2001-2-3, L. C. Smith
Bldg., Seattle, Wn., Attorneys for Defendant.

Plaintiff sues to reform and recover upon a policy of insurance upon the "Companion," of which he was the owner.

In 1925 plaintiff chartered this vessel to the A. & P. Products Corporation and an insurance policy, designating that corporation as the assured, was issued with the following endorsement:

"Warranted confined during the currency of this policy to the waters of Southeastern Alaska, not north of Skagway nor west of Cape Spencer, with privilege of making one round trip between Seattle, Wash. and policy limits."

By its terms the policy was to expire March 16th, 1926. At the expiration of the charter in the fall of 1925, upon the return of the boat to the plaintiff, the policy was endorsed:

"It is hereby understood and agreed that the warranty under the within policy is changed to read as follows:

'Warranted during the currency of this policy to be employed as a cannery tender and/

or fishing vessel, and to be operated in the waters of Puget Sound, British Columbia and Southeastern Alaska not north of Skagway nor west of Cape Spencer.' [35] ALL OTHER TERMS AND CONDITIONS REMAINING UNCHANGED."

The writing of the policy was in no way altered, however, to designate plaintiff instead of the A. & P. Products Corporation as the assured.

The plaintiff contends that the defendant then agreed to issue a rider to the policy covering the plaintiff's interest, the allegations of the amended complaint being:

"V.

That on or about the 19th day of October, 1925, the plaintiff, John Skansi informed the defendant through its duly authorized and acting agents, Burgard-Sargent & Co., Inc., that his charger with the A. & P. Products corporation had terminated, and that said vessel had been returned to the waters of Puget Sound, and that it was his desire and intention to use and operate said vessel for fishing purposes in the waters of Puget Sound, and then and there requested the defendant so to change and modify its said policy that he, the said John Skansi, would be insured and covered under the terms thereof while operating said gas vessel "Companion" as a cannery tender and fishing vessel in the said waters of Puget Sound.

VI.

That the defendant as the time of the request

for the modification of said policy as aforesaid, admitted its agreement to modify said policy as aforesaid, and then and thereupon agreed so to do and agreed that said policy should be made to insure the interests, cover the operations of the plaintiff, John Skansi, in the waters of Puget Sound during the remainder of the term of said policy, and agreed forthwith to issue a rider to said policy embodying the agreement between said parties as aforesaid.

VII.

That notwithstanding the knowledge and agreements of the defendant as aforesaid, said defendant at the time of the issuance of said policy and at the time of issuance of the rider to said policy hereinabove referred to, by oversight, inadvertence and mistake as plaintiffs believe, failed and neglected to describe the plaintiff, John Skansi, as the beneficiary under said policy, although it was the intention of the plaintiff and said defendant that he should be described as beneficiary thereunder, as his respective interest should appear.”

The foregoing allegations are denied by the defendant. [36]

Plaintiff cites: *Robbins vs. Milwaukee Mechanics Ins. Co.*, 102 Wash. 544; 20 R. C. L., p. 353, Sec. 15; 20 R. C. L., p. 349, Sec. 10; *McElroy vs. British America Assurance Co.*, 94 Fed. 990, Sec. 2909, *Pierce's Code* (Sec. 7033, R. C. St.); Sec. 2941, *Pierce's Code* (Sec. 7078, R. C. St.); Sec. 3029, *Pierce's Code* (Sec. 7176, R. C. St.); Sec. 3033,

Pierce's Code (Sec. 7171, R. C. St.); Lindstrom vs. Employers Indemnity Corp., 146 Wash. 484; Reynolds vs. Canton Insurance Co., 98 Wash. 425; Robin vs. The Milwaukee Mechanics Insurance Co., 102 Wash. 539; Pierce's Code, Sec. 3014 (Sec. 7152, R. C. St.); Pierce's Code, Sec. 3016 (Sec. 7154, R. C. St.); Staats vs. Pioneer Insurance Association, 55 Wash. 60; National Ohio Farmers Insurance Co. vs. Williams, 112 N. E. 556; Gaskell vs. Northern Assurance Company, 73 Wash. 668; Sec. 3036; Pierce's Code (Sec. 7174, R. C. St.); Joyce on Insurance, Sec. 2167; The Patpsco Company, 28 U. S. 222 (3 Peters); Sandanger vs. Carlyle Packing Company, 112 Wash. 480.

Defendant cites: Equity Rule No. 50; 34 Cyc. pages, 904, 907, 915, 919, 967, 970, 979, 984, and 988; Conrads vs. Green, 92 Wash. 269; Moore vs. Parker, 83 Wash. 399; Hapeman vs. McNeal, 48 Wash. 527; Second Nat. Bank vs. Colorado Trust Co., 288 Fed. 25; Weinhard vs. Summerville, 46 Fed. 127, 129; Rem. Comp. Stat., Sections, 7033, 7145, 7088 and 7120; Reynolds vs. Pacific Marine Ins. Co., 105 Wash. 666, 669; Lauridsen vs. Bowden et al., 107 Wash. 310; Day vs. St. Paul Fire & Marine Ins. Co., 111 Wash. 49; Lindstrom vs. Employers Indemnity Corp., 146 Wash. 381; Sandanger vs. Carlisle Packing Co., 112 Wash. 480; English Marine Insurance Act, 1906, Sec. 39, Subsec. 5; Arnould, Sec. 697; Thompson vs. Hopper, 1856, C. E. & B. 172, 937; E. B. & E. 1038, 1858; E. B. & E., 1038 (Ex. Ch.); Dudgeon vs. Pembroke, 1877, 2 App. Cas. 284; Anderson vs. Thames & Mercey (C. A.), 1898, 2 Q. B. 114; Thomas vs. [37]

Tyre, 1 K. B. 938, 1917; Thora Shipping Co. vs. London, etc., 30 L. T. R. 595; Republic, 61 Fed. 109; Union Insurance Co. vs. Smith, 124 U. S. 405; New York & P. R. S. S. Co. vs. Aetna, 204 Fed. 255; The Linseed King, 1928, A. M. C. 589; Parsons vs. Empire Transportation Co., 111 Fed. 202; The Miami, 1927, A. M. C. 209.

CUSHMAN, District Judge.—The evidence shows that Burgard, Sargent, Inc., was the agent of the defendant. It shows that the plaintiff dealt directly with the witness Dow of Wilbur E. Dow Co., Inc., hereinafter designated as The Dow Company.

The preponderance of the evidence shows that Dow knew that plaintiff had long been the owner of the vessel; that plaintiff, in effect, requested Dow to have the policy fixed so he could use the vessel on Puget Sound; that Dow understood that to do this would require a rider naming the plaintiff as the assured and a change in the description of the waters in which the boat was to operate and that Dow told plaintiff that such change would be made. It is also shown that Dow thought, after conversation with Sargent of Burgard, Sargent, Inc., the changes had been made. Sargent appears to have had the active management of at least the details of the Insurance business of his company. As between Dow and Sargent the question is, who made the mistake in not changing the policy to name the plaintiff as the assured. If it was Sargent's mistake, no question is made but that the policy should be reformed, but defendant claims that the mistake

Plaintiff, the owner of the gas boat "Companion," sixty-three or sixty-four feet long, fifteen and one-half foot beam, brought this suit to reform an insurance policy and to recover thereon for the total destruction of the vessel by fire.

After reformation, a jury being waived, the remaining issues were tried by the Court.

The defendant admits the destruction of the vessel by fire but alleges that at the commencement of the voyage and up to and at the time of her destruction the vessel was unseaworthy in that it had a heater and a five-gallon coal-oil can theretofore used as a container for coal-oil used by being poured into the heater as an aid in making fires therein; that at the beginning of the voyage, with the privity and knowledge of the owner and the charterer, the coal-oil can was filled with gasoline; that it continued so filled to the time of the destruction of the vessel; that on the 30th day of December, 1925, the Master, pursuant to the practice followed on the vessel in order to obtain a fire, [41] poured into the heater part of the contents of the can; that this gasoline exploded causing the fire which destroyed the vessel. Plaintiff denies the alleged unseaworthiness.

While there is a difference in the deductions made by the plaintiff and defendant from the evidence, there is no substantial dispute in the testimony which is to the following effect:

It was the practice upon this vessel to carry two 5-gallon cans upon a shelf in the engine-room near the engine which shelf was against the athwartship

bulkhead between the engine-room and the fish hold. One can was painted red for gasoline and one gray or lead color for coal-oil, the gasoline being used in priming the engine, which was frequently required sometimes as often as ten or twelve times a day. This was done by pouring the gasoline from the 5-gallon can into a small squirt can from which it was squirted into the cylinders through pet cocks. The coal-oil was used in washing the bearings and other parts of the engine, filling lanterns for the vessel's lights and starting or renewing fires in the forecastle heater. The coal-oil from this can was used daily in filling the lanterns and otherwise. How frequently it was used in the stove is not shown. There was also carried upon this shelf a plain 5-gallon can containing engine oil. The heater in the forecastle was an ordinary "shipmate" coal and wood stove combined.

The vessel was refueled "every week and some times every twelve or fourteen days." The cans were filled when the vessel refueled. At such times these cans were taken from the vessel, placed on the float and filled by the gasoline station attendant after which they were returned to the boat. The testimony is not exact as to the length of time before the burning of the boat that the last refueling took place. One of the witnesses testifying upon this point states that it was about a week or a little [42] more than a week before. The other, eight or ten days. The boat was operated steadily between the last refueling and its destruction. In a

protest by the Master, made less than a month after the burning of the vessel, he stated:

“ * * * all went well until about 6 P. M., when we were about a mile off the north side of Richmond Point, West Pass; as the fire in the heater was about out, I put in some coal and when it would not burn I picked up what I thought was the five-gallon can in which we kept coal-oil, and poured it in the stove; instead of coal-oil, the contents were evidently gasoline as it immediately caused an explosion which blew out the stove, fired my clothes and knocked me up against the steps leading from the forecastle; I managed to stumble to the deck and my engineer, Art Power, grabbed a blanket and smothered the flames on my clothes; he then rushed to the engine-room and stopped the engine, and tried to extinguish the fire with the extinguishers, but it had gained too much headway and we were compelled to launch the small boat and pull off; by this time the engine-room and forecastle were all ablaze. * * *”

Upon the trial the Master testified, in effect: That on the shelf in the engine-room was carried coal-oil in a gray or lead color can, and gasoline in a red can; that he was familiar with both cans; that he picked up the gray can in the engine-room, carried it forward into the forecastle and poured from the can into a coffee cup, and the latter (a quarter of a cup full) was poured into the open stove. He stated the explosion immediately followed.

Plaintiff cites: Joyce on Insurance, Vol. 4, Sec-

ond Ed., 1918, Section 2167; The Patapsco Insurance Co. vs. Coulter, 3 Pet. S. C. Rep. 223; 7 Law Ed. 660; Orient Mutual Ins. Co. vs. Adams, 123 S. C. Rep. 67; 31 Law Ed. 63; Copeland vs. New England Ins. Co., 2 Met. (43 Mass.) 432; 1 Phillips on Insurance 402; Joyce on Insurance, Vol. 4, page 3702.

Defendant cites: Sandanger vs. Carlisle Packing Company, 112 Wash. 480; 259 U. S. 253 (66 L. Ed. 927); the Patapsco Insurance Company vs. Coulter, 7 L. Ed. 219; Orient Mutual Ins. Co. vs. Adams, [43] 31 L. Ed. 83; Joyce on Insurance, Vol. 4, Sec. 2167; Section 39, Subsection 5, English Marine Insurance Act, 1906; Arnould on Marine Insurance; New York & P. R. S. S. Co. vs. Aetna Insurance Co., 204 Fed. 255; Thompson vs. Hopper, 1856, 6 E. & B. 172, 937; E. B. & E. 1038; 1858, E. B. & E. 1038 (Ex. Ch.); Dudgeon vs. Pembroke, 1877, 2 App. Cas. 284; Anderson vs. Thames & Mersey (C. A.), 1898, 2 Q. B. 114; Thomas vs. Tyre, 1 K. B. 938, 1917; Thora Shipping Co. vs. London, etc., 30 L. T. R. 595; Republic, 81 Fed. 109; Union Insurance Co. vs. Smith, 124 U. S. 405; The Linseed King, 1928 A. M. C. 589; Parsons vs. Empire Transportation Co., 111 Fed. 202; The Miami, 1927, A. M. C. 209.

CUSHMAN, District Judge. — Defendant contends that the vessel was unseaworthy at the commencement of and during her last voyage, the contention being, first, that carrying, in the manner described, five gallons of gasoline in any can in the engine-room rendered her unseaworthy and further

that she was unseaworthy because on this particular voyage the gray or lead color can contained gasoline instead of coal-oil.

The Court finds that carrying five gallons of gasoline in a red can in the engine-room on this vessel, with the other cans, in the manner disclosed, did not render the vessel unseaworthy. The Court further finds that while it is possible that the Master of the vessel on the occasion in question may have taken the gasoline can by mistake instead of the coal-oil can or that the coal-oil can may have then had gasoline in it, yet it appears more probable that the coal-oil can was used by him and that it then contained coal-oil, a part of which he poured from the can into the stove in the manner stated by him in his protest and not from a cup as stated by him in his testimony. It appears [44] to the Court very improbable that the coal-oil can could have been used as frequently as the evidence indicates during a week or more while containing gasoline instead of coal-oil without that fact having been learned prior to the explosion and destruction of the vessel. The Court further finds the vessel to have been seaworthy at the commencement of and during the voyage in question and that plaintiff is entitled to recover as prayed.

The judgment or decree will be settled upon notice.

[Indorsed]: Filed Apr. 26, 1929. [45]

JUDGMENT.

This cause coming on to be further heard on March 2, 1929, plaintiff appearing with Charles T. Peterson, his attorney, and defendant appearing by Howard G. Cosgrove of Messrs. Cosgrove & Terhune, its attorneys, and the respective parties having introduced evidence with respect to the liability of defendant to plaintiff on the policy of insurance sued on herein, as reformed by interlocutory decree of the Court entered herein on February 11, 1929; and the defendant having at the close of the trial challenged the sufficiency of the evidence and moved for a dismissal, and said motion and cause having been taken under advisement:

NOW THEREFORE, the Court does hereby deny said motion, to which ruling defendant excepts and same is allowed:

And the cause being further considered by the Court, said interlocutory decree of February 11, 1929, is reaffirmed, and IT IS ORDERED, ADJUDGED AND DECREED that plaintiff, John Skansi, do have and recover of and from the defendant, Globe and Rutgers Fire Insurance Company, a corporation, the principal sum of Eleven Thousand Three Hundred and no/100 (\$11,300.00) \$11,300.00, together with interest thereon at the rate of 6% per annum, from January 26, 1926, to June 25, 1929, in the sum of \$2,301.36, making a total of \$13,601.36, together with the [46] costs of suit herein to be taxed.

To this judgment defendant excepts, and its exception is hereby allowed.

(Testimony of John Skansi.)

Done in open court this 25th day of June, 1929.

EDWARD E. CUSHMAN,
Judge.

[Indorsed]: Filed Jun. 25, 1929. [47]

STATEMENT OF THE EVIDENCE UPON
THE TRIAL.

The Court announced:

“As the Court understands it now, the first issue will be the reformation of the contract, and then when that is ruled on we will determine what course should be pursued.”

TESTIMONY OF JOHN SKANSI, FOR PLAINTIFF.

JOHN SKANSI, plaintiff, testified:

I was owner of the gas boat “Companion” in March, 1925, to which answer defendant objected and moved to strike unless such ownership should be shown to have been brought to the knowledge of the defendant. The attorney for plaintiff then stated:

“We will have to connect that up.”

The objection was overruled.

I had a half interest in the boat in 1919, and in 1921 or 1922 became sole owner. I had an agreement in the early part of 1925 with the A. & P. Products Company—a charter-party. Exhibit “A” attached to the complaint is a copy.

It was offered in evidence (and admitted), de-

(Testimony of John Skansi.)

defendant objecting on the ground that it had not been brought to the attention or knowledge of the defendant, and was incompetent, irrelevant and immaterial. The objection was overruled.

Exhibit "A" is a charter-party dated February 17th, 1925, between John Skansi and the A. & P. Products Corporation, by which Skansi as owner of the vessel "Companion" chartered same to A. & P. Products Company [48] from June 1st, 1925, to September 15th, 1925. The hire for said vessel was \$2,500.00. The charterer agreed to pay the premium for full marine insurance covering the term of the charter to the extent of \$10,000.

The attorney for plaintiff announced:

"I call the Court's attention to the fact that the A. & P. Products Company entered into this charter agreement which runs from June 1, 1925, to September 15, 1925, and agreed to provide ten thousand dollars of insurance on the vessel."

(Mr. SKANSI.) The A. & P. Products Company took possession of the "Companion" under the charter-party early that year, and it was returned to me between September 10th and 15th, 1925, at the Seattle Fishermen's Dock, Ballard and Marine Ways. I have dealt with Wilbur E. Dow & Company about thirteen years. Following the making of this charter there was a ten thousand dollar policy on the vessel effected through the A. & P. Products Company. I had \$1,300.00, and they had \$10,000.00. On this \$10,000.00 policy I paid as premium \$461.08. I got a receipt from the A. & P. Products Company for the payment of the \$10,-

(Testimony of John Skansi.)

000.00 policy. Plaintiff's Exhibit "B" is the receipt.

The A. & P. Products Corporation paid the premium on the \$1,300.00 policy and took it out of their settlement with me. The receipt, Exhibit "B," is a full statement of my settlement with them.

The exhibit was offered in evidence, to which defendant objected:

"I object to this, if the Court please, because this purports to be a receipt of the A. & P. Products Company to Mr. Skansi, and no receipt on the part of this insurance company or any agent of the insurance company. This is a receipt which we never heard of and contains details which have no part in this case. It is entirely incompetent, irrelevant and immaterial, a transaction between this man Skansi and the A. & P. Products Company, and has nothing to do with this defendant corporation whatever."

The attorney for the plaintiff announced that the paper showed Skansi's payment of the premium for eight and a half months on this policy, upon which the objection was overruled. The document was admitted as plaintiff's Exhibit "B."

(Mr. SKANSI.) I had obtained other policies of insurance from Wilbur Dow & Company prior to the policy involved in this suit.

I had policies from them at least four years steady and before that once or twice. [49]

The witness was asked if he had had any talk with Dow & Company after the expiration of the

(Testimony of John Skansi.)

charter-party regarding any changes to be made in this policy of insurance, to which objection was made that the question called for hearsay. The objection was sustained, then overruled, the Court announcing:

“It is admitted subject to the establishment of the agency of Dow & Company; that is, of their being the agents of the defendant.” [50]

(Mr. SKANSI.) I had a conversation with Mr. Dow of Dow & Company after the expiration of the charter-party with the A. & P. Products Company regarding the changing of this policy, which conversation was after the boat was in drydock, about September 19th. The boat was then on the drydock on the Ballard and Marine ways, at Seattle. It was on the drydock for repair on account of some damage up north. I told Mr. Dow I could not use the boat in Puget Sound and I wanted a policy to cover Puget Sound, and he called up Mr. Sargent and he told him about it, and he said—to which defendant objected. Objection overruled.

“And he said, go ahead. That he going—that he going to put—an endorsement. I was going to have an endorsement.”

Again objection was made that the witness could not testify as to conversation between Dow and Sargent. The objection was overruled.

“Mr. Dow said that Mr. Sargent told him that he going to place policy to cover Puget Sound.”

Defendant again objected.

I told Mr. Dow I could not use the boat in Puget

(Testimony of John Skansi.)

fore but I can't remember the names. This was in 1922, 1923 and 1924—the A. & P. Products Company insured the boat for me through Mr. Wilbur Dow & Company.

I obtained about six other policies before this through Dow & Company.

The objections to the hearsay testimony and the motions to strike made by the defendant were renewed, the Court denying the same, with leave to renew at the close of all the testimony. [52]

TESTIMONY OF WILBUR E. DOW, FOR PLAINTIFF.

WILBUR E. DOW, a witness for the plaintiff, testified:

My business is that of a Custom House broker and insurance agent with offices in the Central Building, Third Avenue, Seattle. I became acquainted with Mr. Skansi in the fall of 1914 or the spring of 1915. The occasion was insurance and documenting of vessels. I first wrote insurance for Mr. Skansi in 1918 and since that time have written several or more policies on his vessel. The policies would be left with me and Skansi would pick them up in the fall. That was done in this case.

“Do you recall this policy that is involved in this suit here?”

A. Yes, sir.

What did you have to do with the issuance of that originally, Mr. Dow? It is admitted in the pleadings, so I am not going to offer it in evidence.

(Testimony of Wilbur E. Dow.)

A. As an insurance agent and for Burgard & Sargent I had this policy drawn up.

Mr. COSGROVE.—If the Court please, I object to that answer as not responsive and it also includes a conclusion, and I move to strike out who he was acting for.

The COURT.—Well, it may not be responsive, but so far as the answer is concerned all he said is that he had the policy made up. I don't see that that commits anybody in the case, so I will overrule the objection."

The Nakat Packing Corporation applied to me for the policy, which is the A. & P. Products Corporation. Mr. Skansi did not see me regarding this policy—only he asked me if the vessel was insured, prior to the vessel going on the charter. The Nakat Packing Corporation applied for the insurance. I called up Mr. Sargent and had him come over to my office. "I told Mr. Sargent that I was compelled to give him a certain amount of business, going to split it up among agents, and I gave him a list of all the vessels that the Nakat Packing Company owned, including the chartered vessel, the 'Companion.'" That was either in April or March, in 1925.

I was not an insurance broker in 1925, and am not now. I delivered these policies to the Nakat Packing Company—I collected the premiums on them from the A. & P. Products Company and remitted them to Burgard, Sargent & Company, local agents of the defendant at Seattle, and deducted a 10%

(Testimony of Wilbur E. Dow.)

commission. The premium charge for this policy was \$322.50 and I took \$62.15.

Upon request Mr. Casprow, attorney for defendant, produced surveyor's report of vessel.

(Mr. DOW.) Plaintiff's Exhibit "C," identified as a surveyor's report from the Marine Board of Underwriters, was produced by me upon the request of Burgard & Sargent. The surveyor's reports are made in quadruplicate, a copy of which I forwarded to Burgard & Sargent. [53]

Exhibit "C" is a report of the Board of Marine Underwriters of San Francisco, marked "private-confidential" of motor vessel survey, covering the vessel "Companion," contains a full description of the vessel, the name of the owner, "J. Skansie" built by Skansie. Under the title "Remarks" is the following: "Held a careful survey on the vessel while afloat, found her in good condition throughout. She will engage as cannery tender at Whitefish and Union Bay, Alaska, canneries. Consider her suitable for this trade. Signed: John M. Sheriff, Surveyor." Dated Seattle, Washington, March 16, 1925.

Exhibit "C" was admitted.

(Mr. DOW.) I received an acknowledgment of the surveyor's report from Burgard & Sargent by the receipt of the policy. We transmitted to Burgard & Sargent Company a copy of the survey on May 16, 1925, and received the policy, together with a letter of transmittal, on March 21, 1925.

"I would not have received the policy from them

(Testimony of Wilbur E. Dow.)

without the certificate (referring to the surveyor's report Exhibit 'C')." "The surveyor's report was sent to them on March 20th, 1925, and the policy received from on March 21, 1925. No vessel can be insured without such report."

In September, 1925, the vessel had a loss up north going ashore or collided with some fish-traps—two accidents, June 25th and June 30th.

A note of protest relating to the June losses of said vessel was offered as Plaintiff's Exhibit "D," and admitted in evidence.

(Mr. DOW.) Plaintiff's Exhibit "D" was a protest or proof of loss under the policy sued on in this action and recites that the owner of the vessel was John Skansi and that it was under charter to A. & P. Products Company.

The losses referred to in the protest, Exhibit "D," were settled through Johnson & Higgins, adjusters, which adjustment shows that there was then other insurance upon the "Companion." The defendant, upon the direction of the A. & P. Products Corporation paid its adjusted apportionment of said June losses to me. The adjustment was made November 27, 1925.

There were two other policies, one in the Yangtze Insurance Association, Ltd., of \$500.00 and another Yangtze Insurance Association, Ltd., of \$200.00. These policies run to June Skansi and the loss was apportionated between the several policies.

John Skansi, the plaintiff, called on me in con-

(Testimony of Wilbur E. Dow.)

nection with this insurance at my office in September, 1925.

“And what, if anything, did he say to you regarding [54] it?”

“That is objected to again as hearsay, and incompetent, irrelevant and immaterial, and not brought home to the knowledge of the defendant.”

Objection overruled. Exception.

(Mr. DOW.) He informed me that the vessel had completed her charter-party and now desired to fish on the Sound. I examined the policy and told him he was correct not to go any further until we communicated with Burgard, Sargent & Company. I called up Mr. Sargent, who was the manager of their Marine Department, and explained the conditions fully and completely to him. I said to him that the vessel was now off the charter-party and that the owner, John Skansi, desired to use the vessel on Puget Sound and I wanted an endorsement to conform as to how the other vessels were insured, not only as to that company, but with all others, and that practice still is in force, and Mr. Sargent told me that he would fix up the endorsement; that it was perfectly all right, tell him to go out, and we had some correspondence and he eventually did get an endorsement permitting that. I advised him that the vessel was now off the charter-party for the A. & P. Products Corporation, and Skansi, the owner, now desired to fish on the Sound, or possibly go on a charter on the Sound, and I wanted an endorsement so that the vessel

(Testimony of Wilbur E. Dow.)

would at all times be covered on the Sound. He said he would fix the endorsement up and send it over, and then we had some correspondence on it, and eventually got it. The policy was then in my safe. I saw Mr. Skansi afterwards regarding it. I assured him that his vessel was fully covered. He received the policy just before his departure for Europe. The June losses, adjusted through Johnson & Higgins, were paid to me, and Burgard & Sargent knew that these other companies were involved in those losses and that Skansi was the owner of the boat. I notified Burgard, Sargent & Company by letter September 18, 1925, that at the time of the losses adjusted in September, 1925, there were other policies of insurance on the "Companion." I knew who the assured was under the Yangtze policies that were involved in this September settlement, and I communicated that fact to Burgard, Sargent.

Objection was made: "Because it would be incompetent, irrelevant and immaterial, because there is no showing that the information was communicated prior to the issuance of the policy in question. In the face of the fact that the policy was written definitely in favor of somebody else, it is incompetent, irrelevant and immaterial. The policy being written in favor of [55] the A. & P. Products Corporation, what these other policies might have been, or in whose favor they might have

(Testimony of Wilbur E. Dow.)

been written, has no bearing upon what the agreement was as to this particular policy.”

Objection overruled. Exception noted.

The attorney for the defendant announced that they denied defendant knew that John Skansi was the owner.

(Mr. DOW.) At the time of the adjustment in September of the June losses. I showed Mr. Sargent the policies. At first we were going to try to have it adjusted without the expense of an outside adjuster. I told Burgard & Sargent that John Skansi was the assured under those policies.

I told Burgard & Sargent that John Skansi was the owner at the inception of the policy itself. The survey report, our agreement, and I communicated it to them through the notes of protest, and when the loss was adjusted in September, 1925, I discussed with Mr. Sargent the loss and who would be adjuster, and showed him the policy and we were first going to try to have the loss adjusted without having the expense of calling in an outside adjuster.

Cross-examination (DOW).

I told Burgard & Sargent at the beginning, at the time this policy sued upon was written, that other policies of insurance were then upon the “Companion.” I did not at that time inform Sargent that other insurance companies had written policies upon the “Companion” in the name of John Skansi. I first told Sargent about it just prior to that survey that Skansi owned the “Companion.” Some time right after September 18, 1925, I told

(Testimony of Wilbur E. Dow.)

Sargent that these other policies were written in the name of John Skansi. I told him after the July loss happened; I did not tell him before.

I told Sargent just prior to the time of the survey that Skansi owned the "Companion," and I told him that Skansi was the assured under the Yangtze policies just after the loss happened in July.

The A. & P. Products Corporation in March, 1925, had offices in the Central Building, in Seattle, on the same floor as I have my office—it owned a number of fishing vessels,—the "Tukaho," "Baron F.," "Hazel Robb," "Petrol," "White Cap 2nd," "Frederick C." and "Columbia Bay." I did not exactly have charge of the procurement of insurance on all of these vessels in March, 1925. The business was open for competition. I solicited that business and if I could meet the conditions, I naturally expected to get it. I did, and I got the business. It could have been taken away though at any time. I solicited the insurance business the same as if I came to you as an insurance agent.

[56]

At that time I was not a licensed agent of the Globe & Rutgers Fire Insurance Company, although I was a licensed agent. I had no license from the Insurance Commissioner to do business with the Globe & Rutgers Fire Insurance Company, but I did business under my other license, not as a broker, but as an agent. I was not a licensed broker, but I was a licensed agent for other companies.

(Testimony of Wilbur E. Dow.)

I could exchange my agencies with any company I desire to do business with. I was a licensed agent for many other companies.

I could not place this particular insurance "at any old rates or any old conditions." I had to submit a proposition. There was a contest on here in Seattle at the time between various agents for the writing of that business. Frank Frederick, representing other companies, was contesting for the business, and the rate was being cut down from day to day between these companies. Frederick would offer one rate; Sargent would offer another. Some of these offers were made to me and Frederick went direct to my clients, although I had been previously giving him a lot of business. This group of vessels was being handled for the purpose of insurance as a fleet, this being the basis upon which we were able to cut the rates down.

Defendant's Exhibit 1 was identified as a cover note and binder of the defendant company by Burgard, Sargent & Company, agents, to the A. & P. Products Company, the application being signed by Mr. Murphy, representing the applicant, and Mr. Sargent, the insurance company, the same being an agreement dated March 6, 1925, for \$10,000.00 insurance on the "Companion" from 4/16/25 to 4/28/25.

(Mr. DOW.) I was doing business in Seattle in 1925, as Wilbur E. Dow & Company, Incorporated. I understand that refers to Wilbur Dow Company when referring to this corporation. I have been a

(Testimony of Wilbur E. Dow.)

long time in business in Seattle; for myself, five years the first day of December, 1928. I have had a good deal of experience in the handling of the documentation of vessels and insurance upon vessels. For fifteen or twenty years I have been engaged in marine insurance business. During this time I had licenses from different companies to write business. Mr. Murphy, whose name is attached to Defendant's Exhibit 1, was at the date of the document the office manager or assistant to the general manager of the A. & P. Products Corporation. I have handled some of Mr. Skansi's business since either the fall or spring of 1914 or 15,—some marine insurance business. When I handled his marine insurance business, he did not tell me with what insurance company to place it; it was left to me to determine where it should be placed, assuming that the rates were equal. The determination [57] of the agent who received the business or of the company who received the business was left to me invariably. I could place the insurance with Mr. Frederick's company or with Mr. Hutchinson, representing the Yangtze, or I could put it with Mr. Sargent or with any one of a number of different agencies in the city, invariably. These vessel policies are usually written for a period of a year, and the policies for the year 1924 on [58] this same fleet of vessels were written through the agency of Frank Frederick but handled through me. "I peddled it out to Frank Frederick." In 1925, under Mr. Sargeant's

(Testimony of Wilbur E. Dow.)

superior officer, I was forced to give the insurance to them or lose their customs business. In March, 1925, I solicited the insurance of this A. & P. Products Corporation fleet. In addition, Sargent was after the business and Frederick, Johnson & Higgins and Marsh & McLennan.

“Mr. C. A. Burckhardt was one of the principal owners of the Globe & Rutgers Insurance Company which, through the agency of C. A. Burckhardt, who was the president and principal owner of the insurance agency of Burgard-Sargent & Company, which I was attempting to buy at one time, he called me over and he said, ‘I am operating seven canneries, and you have to do some business with my companies, or I will take the business away from you,’ meaning the customs-house business.

Q. So that it was just a pure matter of business. You would not have given this insurance to Burgard-Sargent & Company except to same some customs brokerage business?

A. Assuming the rates were going to be equal to the other rates offered.

Q. And if it had not been for that situation, you would have given the business to somebody else; is that what I understand you to say?

A. Exactly, and the rates.

Q. Yes.

The COURT.—‘And the rates?’

A. The insurance rates, if they were equal, all things being equal, why then naturally I would have

(Testimony of Wilbur E. Dow.)

to favor Mr. Sargent or lose the customs-house business of his president's canneries.

Q. But so far as the A. & P. Products Corporation was concerned, it was indifferent as to which agency you place the business with, as long as the rates and terms were satisfactory; is that correct?

A. Invariably, yes, it was left to my judgment. Occasionally there is an exception."

I placed this fleet insurance, including the "Companion," with Sargent in 1925. I collected the premium from the A. & P. Products Corporation and passed it along to Burgard, Sargent & Company, deducting 10% for myself.

The plaintiff then offered in evidence the policy of insurance in question—admitted as Plaintiff's Exhibit 3. This insurance policy is dated March 21, 1925, covering the gas boat "Companion," running from March 16, 1925, to March 16, 1926, the insurance being in favor of the A. & P. Products Corporation, with certain trading limits confining the vessel to the waters of [59] Southeastern Alaska, not north of Skagway nor west of Cape Spencer, for the privilege of making one round trip between Seattle, Washington, and policy limits. Also during the currency of this policy warranted employed as a cannery tender and/or fishing vessel; also warranted to be subject to English law and usage as to liability for and settlement of any and all claims.

(Mr. DOW.) The collection of the 10% premiums was my usual practice. I took no orders

(Testimony of Wilbur E. Dow.)

from Mr. Skansi as to the writing of this particular insurance. I took my instructions from the A. & P. Products Corporation and Mr. Sargent.

“Q. What do you mean by ‘and Mr. Sargent’?”

A. Exactly, because Mr. Sargent came into my office, in 224 or 225 Central Building, I was on the side near the alley, and we discussed rates, terms and conditions, and Sargent was out for the business. There was kind of an insurance war for the business.

Q. Who determined the name of the assured for those fleet policies?

A. Actually agreed between Sargent and I and the A. & P.

Q. And who named the insured? Didn't the A. & P. Products Corporation name the assured?

A. No, not necessarily. I explained the whole situation to Sargent and told him I was compelled to give him a certain line of business, and I was going to give him that particular line of vessels owned by the A. & P. Products Corporation, in whole or in part, or that may be hereafter chartered or acquired, and it was agreed that everything would be put in the A. & P. Products Corporation's name. All right. It was put through at six per cent. Fredericks comes in and offers it for five and a half, and I go back to Sargent, and he gives us a credit memorandum or a blow-back, a difference of one-half of one per cent.

Q. Did you say anything to Sargent at that time

(Testimony of Wilbur E. Dow.)

that the insurance was to be written upon the 'Companion' with loss payable in favor of John Skansi?

A. Perhaps in a general way, everything was written—

Q. Well, did you give him any instructions to write that policy in the name of John Skansi?

A. Why, no, but I explained to him who owned the vessel.

Q. Did you give him any instructions to write that in the name of John Skansi, either as owner, or otherwise?

A. I advised him what the situation was, and it was mutually agreed between us that it would be written in the name of the A. & P.

Q. Did you give him instructions to write it in the name of John Skansi?

A. Why, yes, qualifiedly. He knew who *owed* the vessel. He had the survey report." [60]

(Mr. DOW.) When I first talked to him about it, I told him to write it in the name of Skansi. I told him then that Skansi owned the "Companion." I do not know whether he had the survey of the "Companion." Defendant's Exhibit 1 is a cover note. It is a binder, a contract agreeing to insure a certain vessel and a policy will be delivered in accordance with its conditions. This one is dated March 6, 1925, on the "Companion" and issued by the Globe & Rutgers Fire Insurance Company to the A. & P. Products Corporation. It is in effect a policy of insurance covering until

(Testimony of Wilbur E. Dow.)

such time as a formal policy may be issued. Among insurance people it is recognized as the policy.

Defendant's Exhibit #2 was identified by the witness (and admitted) as a letter of Wilbur E. Dow & Company to Burgard, Sargent & Company, dated March 6, 1925, with the general heading: "Re Fleet of the A. & P. Products Corporation," and saying:

"In line with our conference in this office this morning account the A. & P. Products Corporation fleet, inasmuch as you have a list of the entire fleet, together with the dates of expiration of the policies now in force, you will renew the policies as they come due without further instructions from us.
* * * "

Defendant's Exhibit 3 was identified by the witness (and admitted) as a letter received by him from Burgard, Sargent & Company, dated March 7, 1925, "Re A. & P. Products Corporation" making delivery of policies on the "Tuckaho," "Baron F," "Hazel Robb," "Petrol," "Companion," Policy #10329; also the cover note (Defendant's Exhibit 1). Policy No. 10403 is the policy upon which this suit is brought.

(Mr. DOW.) Defendant's Exhibit 4 is my letter to Burgard, Sargent Company, March 11, 1925, account A. & P. Products Corporation, acknowledging receipt of the policies mentioned in Defendant's Exhibit 3.

Defendant's Exhibit 4 was admitted in evidence.

(Mr. DOW.) Defendant's Exhibit 5 is my letter to Burgard, Sargent & Company dated March 11,

(Testimony of Wilbur E. Dow.)

1925, *re* Gas Screw "Companion," account A. & P. Products Corporation, acknowledging the \$10,000.00 "Companion" covering note, April 16th to April 28th, and defendant's policy No. 10329 on the "Companion" for \$11,300.00

Defendant's Exhibit 5 was admitted in evidence.
[61]

Plaintiff's objected to the introduction of Defendant's Exhibit 5, saying that it was immaterial—

"It is a letter written prior to this agreement that we say was made for the endorsement of this policy. * * * If we did not make any agreement here, your Honor, and your Honor cannot find any agreement was made to make the proper endorsement on this policy and change, in September or October of 1925, then we are not entitled to recover. And anything prior to that time seems to me to be immaterial."

The objection was overruled and the exhibit admitted.

(Mr. DOW.) Defendant's Exhibit 6 is a letter from me to Burgard, Sargent & Company, dated March 18, 1925, in which I give notice that the gas screw "Companion" went into commission and would clear for the north that evening.

Defendant's Exhibit 6 was admitted in evidence.

The witness was asked why the cover note was arranged for a period of only twelve days. Objection was made by the attorney for the plaintiff:

"It seems to me the only question involved in this case is this, a policy of insurance was concededly

(Testimony of Wilbur E. Dow.)

issued by the Globe & Rutgers. We contend that in September or October of 1925, after the charter party had expired, we requested an endorsement on this policy to the effect that the loss was payable to Skansi, the owner, the charter party having expired, and that the vessel might be used on the waters of the Puget Sound. That if we fail in that, we do not have any case. That is the only issue, your Honor, it seems to me, that is involved.”

The objection was withdrawn. Plaintiff's attorney would not agree that he was abandoning any claim, if any he ever made, that there was an agreement prior to the issuance of the policy, that it should be written in the name of John Skansi.

(Mr. DOW.) I had a conversation with Mr. Skansi about September 19, 1925, at my office in Seattle. He informed me that the vessel had completed her charter-party and now desired to fish on the Sound.

The plaintiff offered (and it was admitted) in evidence Plaintiff's Exhibit "F," the extended note of protest relating to the alleged loss of this vessel.
[62]

The endorsement dated October 19, 1925, to the "Companion" policy in suit reads: "It is hereby understood and agreed that the warranty under the within policy is changed to read as follows: 'Warranted during the currency of this policy to be employed as a cannery tender or a fishing vessel, and to be operated in the waters of Puget Sound, British Columbia, Southeastern Alaska, not north

(Testimony of Wilbur E. Dow.)

of Skagway or west of Cape Spencer. All of the terms and conditions remaining unchanged. This slip is attached to and made a part of policy No. 10403, issued to the A. & P. Products Corporation by the Globe & Rutgers Fire Insurance Company, October 19th, 1925.' That endorsement does not say anything about John Skansi. I called Mr. Sargent on the phone in connection with this matter and asked him for an endorsement. I did not tell him at the time that I wanted the policy changed to show John Skansi as the owner. I did not tell him at that time that I wanted the policy changed to show that the assured was John Skansi. Some time in either the last of February or in March or the first of April, at the expiration of our business, Sargent and I had an agreement that he was to write this policy showing John Skansi as the assured. I did not ask him to do this in August. It was the last of February or the last of March or the last of April, in 1925. I did not at any other time make a request for a change in the policy showing John Skansi as the owner. The endorsement of October 19th was put on because the vessel was back from the north and wanted to operate on the Sound—wanted to be covered. Mr. Sargent wrote up the endorsement. That is his signature. That is done under his supervision. I assume he drafted it. I did not do it. I told him the vessel was down here and wanted to fish on the Sound, and got the usual endorsement. It is a matter of practice. I might have had something to do with the drafting of it.

(Testimony of Wilbur E. Dow.)

The witness was shown Defendant's Exhibit 8, and he admitted that it was his signature attached. This letter is dated October 19, 1925, from Wilbur E. Dow Co., Inc., to Burgard, Sargent, Inc., *re* gas screw "Companion," asking approval of the enclosed suggested endorsement extending the trading limits to Puget Sound. It was admitted in evidence.

(Mr. DOW.) Defendant's Exhibit 9 is a letter of Burgard, Sargent Company to me, of date November 19th, enclosing the requested endorsement, with a suggested further change.

It was admitted in evidence.

(Mr. DOW.) Defendant's Exhibit 10 is a letter from me to Burgard, Sargent Company dated October 20, 1925, *re* gas screw "Companion" and the policy in [63] question, transmitting copy of endorsement of October 19th, which was actually attached to the policy.

It was admitted in evidence.

(Mr. DOW.) I prepared—drafted the endorsement of October 19, 1925. There was no charge by way of premium or otherwise made by the Globe & Rutgers Fire Insurance Company for the endorsement of October 19, 1925.

"Q. When you got this endorsement of the 19th of October, 1925, you received from Burgard-Sargent & Company all you asked for at that time?

A. Yes.

Q. The answer is what? A. Yes.

Q. And there was no mistake then made in the

(Testimony of Wilbur E. Dow.)

preparation of that endorsement as originally drawn?

A. It was drawn by mutual agreement. No mistake that I know of."

Direct Examination (DOW).

Mr. Skansi called on me about September or October, 1925; possibly the last of August.

"Q. What did he say to you that he wished done with this policy?"

Defendant objected.

"At this time I object to any conversation, any statements made by Mr. Skansi to Mr. Dow, which were not made in the presence of this defendant. It would be hearsay, and incompetent, irrelevant and immaterial."

Objection overruled and exception allowed.

(Mr. DOW.) Skansi said the vessel was off the charter and he wanted to be covered for the Sound. I called Sargent on the telephone and told him the circumstances and confirmed it by one or more letters; that the vessel was going to fish on the Sound, and wanted an endorsement accordingly. I told him that Skansi had his boat back, and she was off charter. Mr. Sargent said to me in response to the telephone conversation to fix up the endorsement, give him my idea of what was the requirements, and I drew it according to my letters. The Burgard-Sargent blanks never got into my office. They are not there and never were. I made the suggestion but it was done in their office. I

(Testimony of Wilbur E. Dow.)

did not draw them. I do not know whether the original charter-party or a copy of it was exhibited to Burgard & Sargent in connection with this writing. We discussed it, but whether Mr. Sargent saw it or not I do not know. I communicated the terms of it to them, [64] that is when it began and when it expired. A fishing charter is for a season, not so many days.

There is always a different insurance rate for a fleet. Three or more vessels get a lower rate than one. The reason John Skansi was not named as owner in this endorsement was to get the benefit of the lower rates—fleet rates. I discussed that with Mr. Sargent. Mr. Sargent and I were interested in keeping the business for the Globe & Rutgers.

“Q. And the reason for not mentioning John Skansi then was so that you could give a rate that would keep the business from going to some other company or agency; that is true, isn't it?”

A. That is very true, so we did not put his name on the policy.”

(Mr. DOW.) I commenced the discussion of this deal with Mr. Sargent, possibly the last of February or the first of March, or it might have been in April or early in 1925 when he came to my office, at which time we discussed a 6% rate, and Sargent said to me that if we could give him a firm order for all the business of the A. & P. Products Corporation, or its boats that they may own or hereafter acquire, or any vessels that they may charter, it would sweeten the matter up with their general

(Testimony of Wilbur E. Dow.)

agents in San Francisco. We put it up to the A. & P. Products, and they said they would accept the rates. During the interim, Mr. Fredericks came in with a letter from the A. & P. Products Corporation and said he would take care of the fleet for $5\frac{1}{2}\%$. I went back to Mr. Sargent, who took it up with San Francisco, and the rate was brought down to 5% , and he gave us a credit memorandum for the difference of one-half of one per cent. A question of rate. Mr. Skansi was not advised of that. I may have had about three conversations with Sargent on that feature of the matter. Whese were in February or March of 1925. The matter of not mentioning John Skansi's name in the endorsement, but presenting it as a fleet proposition, was not discussed between me and Mr. Sargent. The conversation then was that I told Sargent that Skansi's boat was down and we wanted an endorsement to cover the whole fleet. I said, "Mr. Sargent, the vessel is down, she is off charter, and she wants to either fish or pick up fish, pack fish as a cannery tender on the Sound. Let us have an endorsement." I told him Skansi's boat was here, and he said, "All right, write us a letter, give us a suggestion what the trading limits are," or words to that effect, which I did, and I have a letter here in court, and sent it over to him, and eventually got the endorsement which is on the policy, and I told Skansi that he was all covered.

"Q. As I understand, the purpose of that was to keep this insurance business in Burgard & Sar-

(Testimony of Wilbur E. Dow.)

gent's office, so that it would not go under competition elsewhere?

A. And the rates, yes." [65]

(Mr. DOW.) There was a mutual agreement as to how the endorsement should be drawn up. That was between Mr. Sargent and myself. Mr. Skansi was not a party to that. When I said there was no mistake as to that endorsement, I meant there was no intentional mistake. The endorsement is not as Mr. Skansi requested it.

When that endorsement came back, I do not have any definite knowledge that I looked at it. I might have. I had the policy in the office. In the matter of the endorsement, Mr. Skansi wanted to be covered. He asked me to be covered, and I communicated that to Sargent.

"Q. Did he pay the portion of the premium from October 19th to the expiration of that policy?"

Defendant: "I object, because it is incompetent, irrelevant and immaterial, has no bearing upon any issues in this case, was not brought home to the defendant, and the question here is whether or not this policy should be reformed because of mutual mistake."

Objection overruled and exception allowed.

(Mr. DOW.) Mr. Skansi paid from the time the charter ceased and when he went out on Puget Sound on September 15th.

Plaintiff's Exhibit "A," the charter party of September 17th, was offered in evidence (and admitted). It purports to be a charter dated Febru-

(Testimony of Wilbur E. Dow.)

ary 17, 1925, between John Skansi and the A. & P. Products Corporation, on the vessel "Companion," the term to begin June 1, 1925, and end September 15, 1925. It provided that the charterer should pay the premium for full marine insurance covering the term of the charter to the extent of \$10,000.00. It was objected to by the defendant as hearsay, and not brought to the knowledge or attention of the defendant, and was incompetent, irrelevant and immaterial. Objection overruled and exception allowed.

(Mr. DOW.) I had a copy of this charter party in my office on September 15, 1925. I am familiar with the custom of underwriters and insurers as to the insuring of vessels. I had a survey of these vessels made. I authorized it to begin with. I received the surveyor's reports March 20th, two days after the report was authenticated by the surveyor. [66] I transmitted to Mr. Sargent March 20, 1925, The present policy is dated March 21, 1925. Some of the companies at the time issued policies without any surveys being made. The Globe & Rutgers issued a policy,—they issued a covering note without any survey being made. They issued a policy after the cover note was issued without a survey, provisionally that within a reasonable time, if the vessel is here and you do not produce a survey satisfactory to the underwriters, they cancel the policy.

Mr. Skansi wanted his boat covered on the Sound, but he did not ask me to have the policy specifically name him as the assured.

(Testimony of Wilbur E. Dow.)

The endorsement of October 19th met with my request to Mr. Sargent. As I understand it, the endorsement covered everything asked by Mr. Skansi.

Redirect Examination (DOW).

(Mr. PETERSON.) "I want to ask you about some of your testimony in October of 1927, in this case. I don't know but what this may be—I am surprised at the witness' testimony, your Honor, that is, taking one conception of it, I am surprised, and taking another, of his understanding, I don't see that I can be surprised, but I do want to get the matter clear. I don't want to appear to press this matter too far, but I would like to ask the witness this, regarding his testimony in October of 1927, if I may, without being subject to the charge of impeaching my own witness, for the purpose of clarifying."

(DOW.) Mr. Skansi said to me "in substance exactly as the testimony is."

TESTIMONY OF NICK SKANSI, FOR
PLAINTIFF.

NICK SKANSI, a witness for plaintiff, testified: I am a fish buyer and fishing; am familiar with the gas boat "Companion"; was her Master in December, 1925. She was destroyed by fire between Cove, Vashon Island, and Richmond Point, in Seattle, about 6:30 in the evening on December 30, 1925. She was on voyage from Seattle, the fish dock of

(Testimony of Nick Skansi.)

the National Fish Company, bound for Gig Harbor. Her crew was two of us. She was a pilot-house controlled boat built in December, 1919. She was properly supplied. Her equipment was in the best condition.

I was severely burned by the fire and taken to the hospital.

Cross-examination (NICK SKANSI.)

John Skansi was owner of boat. He left Puget Sound for Europe in October, 1925, returning in July, 1926. He left me in charge of the vessel as skipper. No one else had any control over her while he was gone. I bought the supplies and looked after the vessel's equipment and gear, her upkeep and condition, and operated her while he was gone. I bought the provisions and supplies and oil and equipment which she used, including [67] the coal-oil and gasoline. I remember a heater and oil-can mentioned in my protest. At time of loss had used them about a month. I poured the contents of the coal-oil can on the heater, which exploded and the boat caught fire.

TESTIMONY OF ARTHUR POWERS, FOR
PLAINTIFF.

ARTHUR POWERS, a witness for the plaintiff, testified:

I am a gas engineering machinist. I was aboard of her at the time she took fire and was destroyed. I saw her after the fire, sunk in about two fathoms

(Testimony of Arthur Powers.)

of water on a little point just on the Gig Harbor side of Cove, Vashon Island. All you could see was the remains of her tanks and machinery.

The plaintiff rested, upon which the defendant moved the Court as follows:

“I would like to renew the motions which I made at the beginning, which the Court said might be renewed at the close of the case, to strike the testimony of the witness Dow as to his conversations with John Skansi, particularly that relating to Exhibit ‘A,’ referred to on page 4. I renew my objections too, and I move to strike Plaintiff’s Exhibit ‘B’ on the grounds mentioned at the time.”

Defendant further moved to strike the conversation between Dow and John Skansi, on the ground particularly that it was hearsay, and not brought home to the knowledge of the defendant. All the testimony of Mr. Dow relating to conversations had with Mr. Skansi was objected to as hearsay, the previous objections being renewed, counsel saying:

“May I repeat those motions separately and have a separate ruling on each. The testimony of conversations between Dow and Skansi were inadmissible as hearsay, for the reason that Dow, by the evidence, and under the law, was the agent of Skansi, and not the agent of the underwriter, the defendant; and not being such, the testimony was with a third party, and not in the presence of the defendant.

The COURT.—All motions denied. The law is, as the Court understands it, that when you de-

(Testimony of C. P. Sargent.)

bauch another man's agent, the other man's agent ceases to be the agent of the other man, and becomes your agent. Now, if Dow's testimony is true that Sargent did not leave him as a free agent in the interests of his clients, but held a club over him, and coerced him, or used undue influence to get him to accede to the terms proposed by Sargent, right there he ceased to be the agent of his clients when he yielded to that, and became the agent of Sargent, and Sargent's client." [68]

Mr. COSGROVE.—“I now move, may it please the Court, for a dismissal of the case upon the ground of the insufficiency of the evidence.

The COURT.—Denied.

Mr. COSGROVE.—An exception. And I would like to have exceptions taken to the decision of the Court just previously given.

The COURT.—Exceptions allowed as to each.”

TESTIMONY OF C. P. SARGENT, FOR DEFENDANT.

C. P. SARGENT, a witness for the defendant, testified:

Since 1908 have been in marine insurance business. Have heard all the testimony given in this case. Just prior to the execution of the policy sued upon Mr. Dow made arrangements that we were to insure the vessels of the A. & P. Products Corporation cannery ships. There was nothing at that time said about John Skansi. He did not tell

(Testimony of C. P. Sargent.)

me that the "Companion" was under charter. I did not know that it was under charter.

I handled all of this fleet business that has been testified to here so far as the Globe & Rutgers Fire Insurance Company was concerned.

The October 19th endorsement was written as requested. I did not have any conversation with Mr. Dow leading up to it. If there was any, there was no request made to have the policy changed to show the name of John Skansi. There was no statement made to me that John Skansi was the owner of the "Companion" or that she was off charter. I did not know that this vessel was the vessel of John Skansi. It is the practice among underwriters in Seattle, and vicinity, when writing insurance on vessels under charter, to name the owner of the vessel and the charterers. This policy might have been changed had I known that John Skansi was the owner of the vessel and that it was under charter. If I had known that he was the owner and the vessel was under charter, I would have written it in the name of John Skansi as owner, and the A. & P. Products Corporation as charterer, with the loss payable as any interest might appear.

I never saw before now Plaintiff's Exhibit "A," or any copy of it. The business of Burgard, Sargent & Company in 1925 was wholly fire and marine insurance. There was no arrangement made with me regarding the writing of this policy in the name of John Skansi. The whole contract was to the effect that we were to write the fleet of the vessels owned

(Testimony of C. P. Sargent.)

by the A. & P. Products Corporation. At the time this insurance was arranged, nothing was said to me about John Skansi. Nothing was said to me about him during the spring of 1925. The first time I ever saw him was when he appeared here in court when this trial began.

At the time the cover note of March 6th was written on the "Companion" I did not have any survey of the vessel. The purpose of a cover note is to insure the [69] vessel. It serves the purpose of the policy, and subsequently the policy is issued. As for the rest of the fleet, under our 1925 arrangements for insurance made in March or February, surveys were not always furnished before the policy was issued. The surveys were not all made by the Board of Marine Underwriters surveyors. Two of the vessels were surveyed by the superintendents of the canneries of the assured in Alaska.

At the time the policy in question was written, Mr. Dow had not informed me that Mr. Skansi was the owner of the "Companion." If he had told me that John Skansi was the owner, the wording of the policy would have been different. We would have written it in the name of the owner, and the name of the charterers, with loss, if any, payable as their respective interests may appear. If he had told me that John Skansi was the owner and the A. & P. Products Corporation was the charterer, that would not have made any difference in the rates as to this particular vessel.

(Testimony of C. P. Sargent.)

My attention is called to Plaintiff's Exhibit "C," which appears to be a report of a motor vessel survey. The name of J. A. Skansi, in the upper left-hand corner, is referred to. The first time that I noticed it was after the vessel was destroyed. The purpose of the surveys is for us to secure the particulars of the vessels, and also the report of the surveyor as to the seaworthiness of the vessel. The descriptive matter up in the corner has no effect at all. The contract that I made the early part of March was to the effect that I was to insure the vessels owned by the A. & P. Products Corporation, and I never paid any attention to any other names that appeared in the survey, because the contract I had was to insure the A. & P. Products Corporation vessels. I did not have any knowledge or information at that time which would lead me to believe that this vessel was owned by John Skansi. The reference to John Skansi in the protest of the master relating to the small losses in July came to my attention after the vessel was destroyed. The purpose and importance and value of a protest to an underwriter is to get the particulars of the accident. Any descriptive matter as to ownership has no bearing upon the contract. The July loss payments were made by draft sent to Mr. Dow upon the order of the A. & P. Products Corporation. There was no payment made to Mr. Skansi.

Defendant's Exhibit 11 is the order of the A. & P. Products Corporation directing payment of these

(Testimony of C. P. Sargent.)

July losses to Wilbur E. Dow & Company. They were paid according to the order.

(Mr. SARGENT.) The fleet insurance of the A. & P. Products Corporation was written by F. A. Frederick & Company for 1924. During that year Mr. Dow wrote me about this fleet insurance and said he wanted to put the proposition [70] up to me, that he wanted to place the insurance with our company, and later on he advised me that he was sorry but he was not able to do it.

Defendant's Exhibit 12 is a letter of January 30, 1924, by Wilbur E. Dow Company to Burgard-Sargent & Company, reading:

"We are very much interested in covering seven or more pieces of marine property now located in the north for a new but very responsible fishing and packing corporation, and we would appreciate a personal call from you as early as possible in order that we may go over the details and if possible cover this property.

Kindly let us hear from you on receipt of this letter, and oblige,"

Defendant's Exhibit 13 is a letter of Wilbur E. Dow Company, dated February 7, 1924, to Burgard-Sargent & Company, re marine hull insurance, the A. & P. Products Corporation, reading:

"We understand that the various marine hull insurance companies have entered into an agreement as to rate covering fleet hull policies. We represent the A. & P. Products Corporation, who now have six marine policies written through us; for in-

(Testimony of C. P. Sargent.)

stance, the gas screw 'White Cap II'; the Diesel cannery tender 'Barren F.'; the gas screw cannery tender 'Hazel Robb'; the Diesel cannery tender 'Petrol'; the gas screw 'Nakat,' and the Diesel cannery tender 'Frederick C.'

This company have other vessels, both gas and Diesel, and which vessels we will shortly cover with full marine insurance.

Will you please indicate to us by letter just what fleet rate your people will be willing to give the A. & P. Products Corporation at the expiration of the current policies now in force, and oblige,"

Defendant's Exhibit 14 is a letter dated March 14, 1924, written by Wilbur E. Dow & Company to Burgard-Sargent & Company, reading:

"We return you herewith covering notes gas screws 'Petrol,' 'Barron F.,' 'Hazel Robb' and 'Tuck-a-hoe.' We regret exceedingly, after all our efforts, that we could not swing the fleet of the A. & P. Products Corporation, but we will continue to work together in every possible manner and perhaps later on the situation will clear up."

Defendant's Exhibits 11, 12, 13 and 14 were admitted, plaintiff objecting to Exhibits 12, 13 and 14.
[71]

(Mr. SARGENT.) Leading up to the issuance of the October 19, 1925, endorsement, there may have been a conversation with Dow, but it was along the lines of those letters that have been submitted here in connection with the endorsement, which was drawn up along the lines that Mr. Dow sub-

(Testimony of C. P. Sargent.)

mitted to us. There was nothing said at that time by Mr. Dow concerning Mr. Skansi, not a word. There was nothing said about the vessel going off charter.

The custom at the time this policy was written was that the broker was to be allowed a ten per cent commission, and that is the amount Mr. Dow deducted from the premium on this policy. We handled the business with him just the same as we did with other brokers. He did not have any license from the defendant company to act as its agent in the State of Washington, in 1925. The fleet insurance is written from year to year. Our company did not have it in 1926, nor 1927. The policy (Plaintiff's Exhibit "E") is drawn up in strict accord with the arrangement or contract we had with Mr. Dow during the early spring of 1925. The endorsement of October 19th agrees with the arrangement we had with Mr. Dow. In our efforts to get this 1925 fleet insurance, there was no one else, so far as I know, representing the defendant, or Burgard & Sargent, trying to get this insurance. I know Mr. Charles Burckhardt, but he did not have anything to do with the procurement or attempted procurement of this fleet insurance in 1925.

Cross-examination of Mr. Sargent was deferred.

TESTIMONY OF CHARLES A. BURCKHARDT, FOR DEFENDANT.

CHARLES A. BURCKHARDT, a witness for the defendant, testified:

I am the president and general manager of the Alaska Consolidated Canneries, and also of the Independent Navigation Company, and the Lake Washington Shipping Yards. They are my principal businesses. The Consolidated is the principal business; it was so in 1925. In that year I was president of Burgard-Sargent & Company until June, 1925, when the business was sold out. I had only a tenth interest in the company and was the nominal head of the company, but the active management of the business was in the hands of Mr. Sargent.

I know Wilbur E. Dow of the Wilbur E. Dow Company; have known him for many years, when he was with Frank P. Dow & Company, then looking after our navigation business, and the Alaska cannery business; that is the customs business of those companies. The other companies are principally the Alaska Consolidated Canneries. That is the business that has the customs business, but Burgard-Sargent & Company have no customs business. Frank P. Dow handled the customs business of the Alaska Consolidated canneries until Wilbur E. Dow went into business [72] for himself early in 1924, since which time the latter has handled the business. He had it in 1924, 1925, 1926—

(Testimony of Charles A. Burckhardt.)

every year up to this time, and is handling it today. When Wilbur E. Dow Company began to handle our customs business, it wrote some insurance for us. It has written some marine business on some chartered boats. It was not *place* with the Globe & Rutgers Fire Insurance Company, and was not placed with Burgard, Sargent & Company. There was read to me the following testimony of Mr. Dow:

“A. Mr. C. A. Burckhardt was one of the principal owners of the Globe & Rutgers Insurance Company which, through the agency of C. A. Burckhardt, who was the president and principal owner of the insurance agency of Burgard-Sargent & Company, which I was attempting to buy at one time, he called me over and said, ‘I am operating seven canneries, and you have to do some business with my companies, or I will take the business away from you,’ meaning the customs-house business.”

I never made any such statement to Mr. Dow, or any statement of like effect or like tenor. As a matter of fact, he has had our business continuously from 1924 when he went into business, until this date. I did not have any conversation with Mr. Dow in connection with the A. & P. Products Corporation fleet insurance in 1925. I didn't know that Burgard, Sargent & Company wrote the business. The first time I knew it was this morning when you spoke to me about this case. The first time I heard about this case was last evening when you phoned me to come over here as a witness, and

(Testimony of Charles A. Burckhardt.)

then I thought it was some other company. This is the first time I ever heard of the 1925 fleet insurance of the A. & P. Products Corporation.

Cross-examination (CHARLES A. BURCKHARDT.)

“Q. You have discussed business matters at different times with Mr. Dow regarding this business generally, have you not?

A. Oh, yes, we have had some general discussions.

Q. And you had some general discussions about the matter, like all men have, of reciprocity in business? A. Yes, sir.

Q. And no doubt there was something said about exchanging business in those times?

A. I recall very distinctly when Mr. Dow came down to see me the first time, and starting in business for himself. This company was formerly the Roberts, Burckhardt Company, and afterwards changed to the Burgard-Sargent Company, and Frank P. Dow & Company always gave some insurance business to the Roberts-Burckhardt Company. It was not much, but always some. So when Mr. Dow came down and asked me, saying he was going in business for himself, and also said he would be able to give the Roberts-Burckhardt Company some insurance business in reciprocity. And of course I appreciated that, but I never knew just how much he gave to them. I knew that he gave them some.

Q. But there was a general understanding that he was [73] doing business together?

(Testimony of Charles A. Burckhardt.)

A. Oh, his business, his customs business did not depend upon that, because I do not allow the business of the cannery company at no time to interfere with that insurance company. I could not allow them to.

Q. But you had discussed the matter of reciprocity in your dealings together? A. Oh, yes.

Q. Drawing insurance business to your company in connection with the brokerage business?

A. Yes.

Q. You did not pay any attention or take any active part in this business, I understand?

A. No, sir.

The COURT.—I don't understand that question.

Mr. PETERSON.—He did not take any active part in the insurance business.

Q. You were acquainted with the A. & P. Products Corporation and operations, Mr. Burckhardt?

A. Yes, in a general way.

Q. You know, of course, that they did not operate on the Sound; that they operated in Alaska?

A. As far as I knew that was the only place they were operating was throughout Alaska; I think at that time only in Southeastern Alaska.

Q. And that was the situation in 1925?

A. As far as I can recall."

TESTIMONY OF MRS. LORENE BROWN JACOBSON, FOR PLAINTIFF.

MRS. LORENE BROWN JACOBSON, a witness for the plaintiff, testified:

For five years I have been the bookkeeper and stenographer of Wilbur E. Dow & Company. I handled all the details of the insurance in respect to the gas boat "Companion," and I recall Mr. Nick Skansi calling in September or October of 1925 with respect to an endorsement on this policy. "Mr. Nick Skansi came into the office and wanted an endorsement on the policy, as they were using this boat themselves; the A. & P. Products Corporation had finished with the boat, and according to the policy it stated to be used as a cannery tender in Southeastern Alaska, and they were using it fishing in Puget Sound." I said to Mr. Sargent in effect, that Mr. Skansi was in the office and wanted an endorsement covering the boat while he was operating it on Puget Sound. Mr. Skansi was the owner of the "Companion," and we wanted the policy endorsed so that Mr. Skansi was covered while he was operating it himself. Mr. Sargent said that he would give us an endorsement covering the—that is about all that was said. Mr. Sargent said that Mr. Skansi could operate the boat and that he would have the endorsement over there very shortly. In regard to the getting of that endorsement, Mr. Skansi was in the office twice that I remember. The second time was the time I called up Mr. Sar-

(Testimony of Mrs. Lorene Brown Jacobson.)
gent's office. At that time Mr. Dow had some conversation with him, but I do not know what it was. I told Mr. Skansi that he could take the boat out and we would furnish an endorsement. [74]

Cross-examination (LORENE BROWN
JACOBSON.)

I have been working for Mr. Dow in this capacity for five years. Mr. John Skansi came in with Mr. Nick Skansi the first time, and Mr. Dow took the matter up, but the second time Nick Skansi came in and I handled the matter. Mr. Dow was not in. These two calls must have been several days apart. On the first call Mr. John and Nick Skansi talked to Mr. Dow. At that time Mr. Dow called up Mr. Sargent. I did not hear the conversation. These conversations were after the boat had returned from Alaska in the early fall; I don't remember the date. When John and Nick Skansi came in they said that they had come in respect to an endorsement. I turned them over to Mr. Dow. A few days later, at the next conversation, Nick Skansi came in alone and said that he had not received an endorsement to operate on Puget Sound, that his policy stated that the boat was covered for operating in Southeastern Alaska and he wanted it changed so that it would cover operations in Puget Sound. I don't remember him saying anything about changing it further. I don't know whether the policy was in the office at the time of these conversations or not. I don't recollect seeing John or Nick Skansi examine the policy.

(Testimony of Mrs. Lorene Brown Jacobson.)

Mr. Dow got the business and I handled the details. I had nothing to do with the issuance of the policy, and I do not know how Mr. Nick Skansi knew that the policy did not cover Puget Sound. His brother sent him in to get the endorsement. I examined our office copy of the policy. At the time the policy was made out I knew that it was made out to the A. & P. Products Corporation. I don't recollect anything being said either by myself or Nick Skansi concerning the name of the assured at the time he made his call. We were mainly taking up the trading limits. The vessel had been returned from the party that chartered the boat, the A. & P. Products Corporation, and at that time Mr. Skansi wanted to operate it in Puget Sound, and I called up Mr. Sargent and told him that Mr. Skansi wanted to operate the vessel on Puget Sound and he wanted the trading limits changed to include Puget Sound. We prepared no endorsements. We get them from the company that issues the policy. We state the trading limits we want. There are usual forms for each endorsement. I recollect Defendant's Exhibit 8 as my letter. The endorsement there mentioned is the same that appeared on the Yangtze policy. I copied it. It is the one I requested in the letter.

Defendant's Exhibit 9 is an answer to our letter, Defendant's Exhibit 8. Defendant's Exhibit 10 I remember follows Defendant's Exhibit 9. I asked Mr. Sargent to issue an endorsement permitting the

(Testimony of Mrs. Lorene Brown Jacobson.)
owner, Mr. Skansi to operate the boat in Puget Sound for fishing.

“Q. Did you ask him to have the policy changed so that it would show Mr. Skansi as an assured?”

A. I did not ask exactly that way. As I remember, [75] I put it that he would permit the owner, Mr. Skansi, to operate the vessel as a fishing vessel in Puget Sound.”

I do not believe I looked at the policy after the October 19th endorsement was placed upon it. It came to the office but I don't remember the receipt of the endorsement from the insurance company. After October 19th, 1925, I did not have any further business with this policy until after the boat was lost. I don't remember asking Mr. Sargent for any changes in the policy after October 19th. I only recollect one conversation with Mr. Sargent in connection with this matter. It was over the telephone. I recollect the conversation because Mr. John Skansi was planning to go to Europe and he was in the office talking about it, and that is the reason he called my attention particularly to the boat “Companion.”

At the time of this conversation in 1925, I had handled a great many policies of marine insurance, and was familiar with the usual contents and makeup of marine insurance policies. Prior to these conversations I did not observe that the policy was made out in the name of the A. & P. Products Company.

(Testimony of Mrs. Lorene Brown Jacobson.)

Recross-examination (LORENE BROWN JACOBSON).

The daily which I referred to is an exact copy of the policy which is made up in sets, the insurance company making the policy, and the daily becoming a part of our permanent files.

TESTIMONY OF C. P. SARGENT FOR PLAINTIFF (RECALLED ON REBUTTAL).

Direct Examination on Rebuttal (C. P. SARGENT).

I heard the testimony of Mr. Dow relative to being compelled to give me some business. I did not in 1925, or at any other time take up with Mr. C. A. Bureckhardt the matter of the procurement of the fleet insurance of the A. & P. Products Corporation. I have heard the testimony, but I do not know anything about any such conversation as that Mr. Dow testified he had with Mr. C. A. Bureckhardt. I did not have any relation or connection with any of Mr. Bureckhardt's custom-house business or any of his companies in 1925. I did not know of any threats or any coercion placed upon or directed to Mr. Dow in the matter of his disposition of this insurance business in 1925.

Cross-examination (SARGENT).

I recognize Plaintiff's Exhibit "G," which is a letter written by me to Wilbur E. Dow & Company, dated March 17, 1925, asking for a survey on the "Companion"; also surveys of two other vessels

(Testimony of C. P. Sargent.)

then in Alaska, the latter to be made by plant superintendents. I believe we received the surveys requested. Plaintiff's Exhibits H is a letter from Wilbur E. Dow & Company to Burgard, Sargent & Company dated September 18, 1925, enclosing a note of protest covering several accidents. [76] to "Companion," and advising that copies are being sent to the Yangtze Insurance Company which had two policies on the "Companion," one for \$200.00 and the other for \$500.00. A protest gives the particulars of the damage. I observed the protest when it came into the office and read it.

"Q. And you saw that it stated that John Skansi was the owner of this boat, didn't you?

A. I might have seen it."

I wasn't interested in any part of it referring to the owner. I am only interested in the particulars of the accident. When I read the protest I may have observed that it read there that John Skansi was the owner. Plaintiff's Exhibit I is a letter from Burgard, Sargent & Company to Wilbur E. Dow, dated December 24, 1925, enclosing check for \$423.63, in settlement of the damages described in the protest. The payment represented our portion of the loss.

"Q. You have not returned or offered to return any part of this premium that was paid on this policy, to John Skansi, have you, Mr. Sargent; your company? A. No, sir."

I testified the other day that I did not know John Skansi, had never seen him until this case came on, and I never knew that he claimed to be the owner

(Testimony of C. P. Sargent.)

until this action was brought. I know Mr. Mitchell Skansi here, and I have not seen Nick Skansi before he appeared on the stand here.

“Q. I will ask you if it is not a fact that in 1926, in February or March, Mr. Nick Skansi, in company with Mr. Mitchell Skansi, was in your office in Seattle, and talked to you about the loss, and that Mr. Mitchell Skansi asked you regarding the settlement?

A. I remember Mitchell Skansi was in the office.

Q. I am going to ask you some more before I am through with you. And if in that conversation you said, ‘Well, somehow or other John Skansi was not named in the policy, or in the endorsement, and the company does not want to pay; but I knew all the time that John Skansi was the owner of that boat myself, and if it had been up to me, I would have paid the loss a long time ago,’ or words to that effect? A. I did not.

Q. Nothing substantially to that effect?

A. No, sir.”

In writing policies, if I know that a boat is chartered, I put in the name of the owner, and the policy is written to the owner and the charterer according to their interests, and that would have been done in this case if my attention had been called to the fact that John Skansi was the owner. The only reason it was not done was because the contract we entered into in the early part of March was that we insure the vessels of the A. & P. Products Corporation. [77]

(Testimony of C. P. Sargent.)

“Q. And you stated in your direct examination that if you had known that Skansi was the owner, and this boat was chartered, you would have put in his name as owner, and the loss would have been paid—

A. That is the customary way to do it.

Q. And that is what you say would have been done?

A. In the name of the owner and the charterer.

Q. And you say there would have been no difference in the rate? A. No, sir.”

The surveys are not made for the purpose of determining who the owner is. We pay attention to the marine hazard in a marine policy of insurance. If a policy is issued under a certain form and a survey comes in afterwards and you want to cancel the policy, you can't do it unless by mutual consent. We do not always require a survey as a condition of keeping a policy in force. We have insured vessels where we never had a survey and kept the policies in force for the full expiration period.

In making settlements, we do not always have the bills before us which are incurred in connection with the loss which we pay. Where the owner had three vessels, we would give him a fleet rate. When an owner came in with one vessel, he would have to pay a higher rate. The owner that has a fleet, where there is a volume of business, he puts in the chartered vessels with the owned vessels, and we give him a lower rate, and the individual boat is a

(Testimony of C. P. Sargent.)

higher rate. I am not personally the agent for the Globe & Rutgers Fire Insurance Company. Bur-gard-Sargent, Incorporated is the agent. Generally speaking, I knew that the A. & P. Products Corporation had some plants up in Southeastern Alaska. I did not know they did not operate on the Sound. The original protest which I received was probably sent to Johnson-Higgins, the adjusters.

Redirect Examination (C. P. SARGENT).

In March or February, or whenever it was, in 1925, when we were considering this fleet insurance and were negotiating with Mr. Dow for it, nothing was said to me about Skansi at the time. Just preceding October 19th, if a request had been made to me then to change the policy to make John Skansi the beneficiary or the assured, there might have been some difficulties in the way of acceding to that request. For illustration, when we have a boat individually owned, we always want to make an investigation of the owner, and I did not know Mr. Skansi, and I would have wanted to investigate it, and besides I found out since that Mr. Skansi is an Austrian. While I am not saying anything against Mr. Skansi, because I don't know anything about it, still at that time companies were very particular about writing insurance on vessels owned by Austrians. [78]

Recross-examination (C. P. SARGENT).

I did not testify herein that there would be no difference in rate between an individual and fleet

(Testimony of C. P. Sargent.)

insurance. There is a difference between a fleet rate and an individually owned vessel rate.

Redirect Examination (C. P. SARGENT).

My contract with Dow was with the A. & P. Products Corporation, and the vessel "Companion," had it been owned by Dow, although chartered by the A. & P. Products Corporation, would have been considered by me a part of the fleet, and therefore would have carried the fleet rate. The moment it got out of the fleet there would have been a difference in the rate.

TESTIMONY OF MITCHELL SKANSI, FOR
PLAINTIFF.

MITCHELL SKANSI, a witness for the plaintiff, testified:

My business is shipbuilder and operator; president of the Washington Navigation Company. About the latter part of February or March, 1926, I was present with Nick Skansi in the office of Mr. Sargent in Seattle, and made inquiry of him regarding the payment of the insurance on the gas boat "Companion."

"Q. I will ask you whether or not in that conversation he said to you, in substance, that he had always known that John Skansi was the owner of that boat? A. Yes, I asked him.

Q. But somehow or someway or other he was not mentioned in the policy, or words to that effect?

(Testimony of Mitchell Skansi.)

A. It was this way, I came on purpose with Mr. Nick Skansi, and introduced Mr. Nick Skansi to Mr. Sargent. He was all bruised up yet from the fire, burned, and I told him that this is the man that almost burned up in the boat, and I asked him what he intends to do with that. 'Well,' he said, 'It is kind of a hard thing to say,' he said, 'The boat did not belong to the A. & P. Products Corporation, but belonged to John Skansi,' and he said, 'Someway or other John Skansi did not appear on the policy,' and he said, 'I cannot pay this, I can't pay it, but if I had all to say about it, I would pay that quick,' (snapping fingers) just that way. And I said, 'You always knowed that John Skansi owned that boat?' And he said, 'Yes, sir, I knowed it all the time.'

Cross-examination (MITCHELL SKANSI).

"Q. Of course you know, Mr. Skansi, that between the time of the loss, December 30th, 1925, and the time when you were in Mr. Sargent's office, a claim had been filed by John Skansi with Mr. Sargent's office under this policy, did you not?

A. I don't know nothing about that."

"Q. Just a minute, did he tell you that he knew that John Skansi was the owner when he contracted with [79] Dow, in the spring of 1925, for the policy? A. He didn't say.

Q. Did he tell you that?

A. He didn't say exactly that way. He said he knowed all the time that John was the owner.

(Testimony of Mitchell Skansi.)

Q. What did he mean, 'all the time'?

A. Well, I asked him if he knowed that John was owner of the boat, and he said, 'Yes, I knowed it all of the time,' but he blamed the A. & P. Products Corporation for not putting his name in, or something. He said some way or other his name did not appear there. He said, 'I would have paid if I had all to say about it that quick,' he said, 'but my home office won't let me do it.' That is what he told me. And he told me that also in my office in the Harbor.

Q. He told you that he was sorry for you, didn't he?

A. Well, I don't know as he said sorry, or not."

TESTIMONY OF NICK SKANSI, FOR PLAINTIFF (RECALLED IN REBUTTAL).

NICK SKANSI, a witness in behalf of plaintiff, in rebuttal, testified:

I was present with Mitchell Skansi in Mr. Sargent's office early in the year 1926, in connection with this insurance. A conversation took place regarding this insurance on the "Companion." Mr. Sargent said "In some way or other, John's name did not appear on this policy, and he said the company won't pay him because his name is not mentioned there," and he said, "They won't pay the A. & P. Products Corporation, because they are not the owner of the 'Companion.'" And Mitchell said to Mr. Sargent, "But you know John was the owner of the 'Companion.'" And Mr. Sargent said, "Yes, I knowed all the time." And Mitchell said,

(Testimony of Nick Skansi.)

“What is stopping it?” And he said, “Well, if I got all to say, I would pay John that quick, but my company stopped me.”

Cross-examination (NICK SKANSI).

I am a brother of John Skansi. Mitchell Skansi is our cousin.

“Q. You say that Mr. Sargent told you that some way or other John Skansi’s name did not appear on the policy? A. That is what he said.”

He did not say why. He did not say that anybody had ever asked him to put John Skansi’s name in the policy. We did not ask him such a question. Neither Mitchell nor I when we were in the office of Mr. Sargent did not ask him why the policy did not contain the name of John Skansi.

Plaintiff rests. [80]

TESTIMONY OF C. P. SARGENT, FOR DEFENDANT (IN REBUTTAL.)

C. P. SARGENT, called by defendant in rebuttal, testified:

I heard the testimony of Nick Skansi, what he said about the conversation between Mitchell Skansi, Nick Skansi and myself in my office in the early spring of 1926. I never said to these gentlemen that I knew all the time that the vessel was owned by John Skansi. I did not say anything of similar import. Mr. Skansi came into the office, and talking about this insurance on the “Companion,” he asked me what the trouble was and I told him that

(Testimony of C. P. Sargent.)

the vessel—the arrangement that we had that it showed the vessel in the name of the A. & P. Products Corporation. He then began to talk, saying, “That is the trouble my brother gets into doing business with Dow.”

“Q. Was there anything said about John Skansi’s name being in the policy?”

A. Not a word. Wait a minute. Ask that question again.

Q. Was there anything said about John Skansi’s name there being in or being out of the policy?”

A. Oh, there was a conversation about that, John Skansi.

Q. Well, what was it?”

They told me that John Skansi owned the boat, and I said the first time I heard about it was after the loss occurred.

The testimony of Mitchell Skansi being the same as Nick in that regard, is also denied.

I heard the testimony of Miss Brown or Mrs. Jacobson. I remember her testifying that John Skansi, the owner of the boat, wanted the policy changed so as to cover fishing on Puget Sound, or something similar, but she is mistaken about having any conversation with me about it. I think I talked to Mr. Dow over the phone having some conversation along the lines of the letters that we have got in here about the endorsement. I had no telephone calls with Mrs. Jacobson in connection with this matter prior to the October 19th endorsement.

(Testimony of John Skansi.)

I received the bills on the adjustment of the July, 1925 losses, in October, 1925, after the making of the October 19th endorsement.

TESTIMONY OF JOHN SKANSI, FOR PLAINTIFF (RECALLED IN REBUTTAL).

JOHN SKANSI, recalled by plaintiff in rebuttal, testified:

I was in Mr. Dow's office in September or October, 1925, and saw Miss Brown regarding the endorsement of the policy of insurance on the "Companion." She called up over the telephone and asked for a person named Mr. Sargent. Yes, she did call him up, and she explained to him what I wanted, before I started out.

Cross-examination (JOHN SKANSI).

Nick was with me, and I was to ask for that business. That conversation was about September 20th, I guess. Miss Brown called up Sargent. She told him that the boat came back from the north, and I want to use the [81] boat for Puget Sound for myself. I saw the policy before I started out for Alaska, but she told me when the boat came back from Alaska that the policy is made for Alaska and I have to have endorsement. This is when I first saw the policy. I did not examine it myself. I got my information from her that it was not good for Puget Sound and I know myself because I have been doing that for years.

(Testimony of John Skansi.)

“Q. Did you talk to Wilbur Dow about this time about this policy? A. No, she called up.

Q. Did you talk to Wilbur Dow about this time about this policy?

A. I don't know; I guess it was the same day, too.”

I talked to Wilbur Dow just shortly before October 19th concerning this policy at his office. He did not have the policy in front of him. He did not examine it because I asked for that and then I seen it afterwards when he put the endorsement. I asked for an endorsement at that time so I could go fishing on Puget Sound.

“Q. Did you say you wanted it fixed up so that it would take your name in too; did you ask for that?

A. No.

Q. You did not ask for that. Did you ask Dow to have it changed so that it would have your name in it?

A. Well, I asked what I wanted the endorsement on that policy to cover the boat on Puget Sound.

Q. Yes, but did you ask him to have your name put in it? A. Yes, sir.

Q. How did you know it was not in it?

A. Because I seen it was not, I seen it once before, before I took the endorsement.

Q. But you just got through saying you had not seen it? A. Well, I did not read it through.

Q. Well, you looked at it long enough to see whether your name was in it, didn't you?

A. I seen the name was not in it.”

(Testimony of John Skansi.)

Redirect Examination (JOHN SKANSI).

I told Wilbur Dow I was going to use the boat myself on Puget Sound.

TESTIMONY OF NICK SKANSI, FOR PLAINTIFF (RECALLED IN REBUTTAL).

NICK SKANSI, recalled for plaintiff in rebuttal, testified:

I was at the office of Wilbur Dow in the fall of 1925 regarding this endorsement. I was two times there, but no one else. The 20th or 25th of September. Mr. Dow was not there. I do not know whether John Skansi was there at that time or not. "He was two or three different times, I can't remember exactly."

"Q. I will ask you if when you were there, if Miss Brown had a conversation, a telephone conversation, [82] called up a man named Sargent, and had a talk with him about that endorsement?

A. Yes, sir, she did."

Both sides rested. The attorney for the defendant challenged the sufficiency of the evidence and moved for a dismissal.

The matter being taken under advisement, the Court, on February 11, 1929, denied defendant's motion, to which defendant excepted and the same was allowed, and entered an interlocutory order reforming the policy of insurance, with exception thereto taken and allowed. The matter was continued for the purpose of hearing and trying and

(Testimony of John Skansi.)

affirmative defense, the cause being tried to the Court, the parties having theretofore filed herein their written waiver of a jury.

TESTIMONY OF JOHN SKANSI, FOR DEFENDANT.

JOHN SKANSI, a witness for the defendant, testified:

The "Companion" was about 63 feet long, 15½ beam, and close to 7 feet deep; 60 H. P. engine Enterprise gas engines; two decks; a pilot-house connected with engines and the forecastle with several bunks. There was a heater stove in the forecastle on the sleeping quarters, two bulkheads—one between engine-room and forecastle, and another between engine and fish hold. The heater in the forecastle with sleeping quarters was a shipmate cooking stove for heating. Had no other heater on board the vessel except in the cooking stove in the kitchen on deck next to pilot-house. I went to Europe in 1925, December 3d, returning July, 1926. Before leaving I had been acting as the managing operator of this vessel, and as such was buying fish with it. I was its skipper during the season before leaving for Europe. As such skipper and owner I bought the fuel, supplies, equipment, looked after her repair. I had a crew of one man. When I left for Europe I left her on the contract with the National Fish Company, but with my brother, Nick Skansi, in charge as skipper. He was to pick up

(Testimony of John Skansi.)

fish for the National Fish Company, taking orders from that company where to go. Nick was supposed to take care of the boat and buy the fuel and all the supplies, keep it in good order and condition. Plaintiff's Exhibit "F," marked law side Defendant's Exhibit "A-1," and identified and introduced, was executed by Nick Skansi January 26, 1926, and stated that the "Companion" sailed from Seattle on December 30, 1925, about 4:00 P. M. in ballast and for Gig Harbor; that " * * * about 6:00 P. M. when we were about a mile off the north side of Richmond Point, West pass; as the fire in the heater was about out, I put in some coal, and when it would not burn, I picked up [83] what I thought was the five-gallon can in which we kept coal-oil, and poured it in the stove; instead of coal-oil, the contents were evidently gasoline, as it immediately caused an explosion which blew out the stove, fired my clothes, knocked me up against the steps leading from the forecastle; I managed to stumble to the deck, and my engineer, Art Power grabbed a blanket and smothered the flames on my clothes; * * * "

The heater referred to in the protest is that one in the forecastle. The five-gallon can was kept in the engine-room, one containing coal-oil and one gasoline, a regular part of the equipment, when I left for Europe. The gasoline can was painted red and the coal-oil can lead color.

(Testimony of John Skansi.)

Cross-examination (JOHN SKANSI).

The vessel was built by Mitchell Skansi at Gig Harbor. The shelf on which the coal-oil and gasoline cans was held was put in by his carpenters when the boat was built. In addition to the oil and gasoline cans there was the lubricating oil can. Three square cans, each five gallons. The gasoline was kept to prime the engine, and the kerosene for running lights and to wash the igniters. The prime had to be used two or three times a day. The five-gallon cans had to be filled sometimes every ten days or two weeks depending on the run. There was a 500-gallon gasoline tank on each side of the engine. My business is that of a fisherman. Other boats carried gasoline, kerosene and fuel oil in the engine-room the same as I did. When the vessel was surveyed March 18, 1925, I had gasoline, kerosene, engine oil arranged in the same place on the same shelf. It has always been in those cans in this place from the time we built the boat.

Mitchell Skansi built an average of eight fishing boats a year like this since 1916. The cans referred to were five-gallon square cans, the coal-oil can, the fuel oil can and the gasoline can. The gasoline can was painted red, the kerosene can was painted lead color and the oil can was not painted. The gasoline was kept for priming the engine and the engine was primed two or three times a day. The kerosene was kept for the running of lights and to wash the igniters on the engine. I have been on lots of boats of the general description of the

(Testimony of John Skansi.)

“Companion” and in a general way they had the same kind of an arrangement for their kerosene, gasoline and oil, the same as the “Companion” did. When the survey of the boat was made by John M. Sheriff on March 18, 1925, she had the cans of gasoline, kerosene and engine oil arranged the same way. The position of the oil and the shelf had never been changed.

Redirect Examination (JOHN SKANSI).

The gasoline was put into these tanks from the main deck, a pipe running down. We have been using the particular red can since along in the summer time. These cans were filled through a funnel or faucet at an oil [84] station. We took our cans off the boat to fill them. The gasoline was taken out of the big can and poured into a priming can.

Recross-examination (JOHN SKANSI).

The cans are renewed from time to time. The shelf was athwartships against the bulkhead, and the three cans kept thereon. Nick Skansi’s duties were the same as any other skipper. The oil man at the station filled the oil cans.

The different colored cans were used all the time ever since the boat was built. Whenever we would start off on a trip, like going to Alaska, we would put on new cans. The gas companies make a charge of fifty cents for a new can and whenever we thought the cans should be renewed we would put on new cans, but they would always be painted the

(Testimony of John Skansi.)

same color. The duties of a captain on a fishing boat on Puget Sound is to take care of the boat, crew and grub and fuel and everything they need. He buys everything. Nick Skansi's duties were not any different on the "Companion" than were the duties of any other skipper on any other fishing boat on the sound. The cans are filled by the station men at the different supply tanks.

TESTIMONY OF NICK SKANSI, FOR DEFENDANT.

NICK SKANSI, a witness for the defendant, testified:

I am a brother of John Skansi. I recognize law side Defendant's Exhibit "A-1" as my protest of the accident in connection with the loss of the "Companion." The heater mentioned in the protest was in the fore-castle [85] living quarters for the purpose of warming the fore-castle. We used coal as fuel. The can which I used there I got off the shelf back in the engine-room. I went into the fore-castle and poured from this can into the stove. The can was the grey kind. I am familiar with the red and grey cans. It is the same as the lead can. Upon my brother leaving for Europe, I started on the fish buying job. I refueled and re-equipped the vessel and reported to the National Fish Company, running her back and forth on Puget Sound. I refueled the main gasoline tanks sometimes every week, sometimes twelve or fourteen

(Testimony of Nick Skansi.)

days. The red can mentioned by my brother was there. We usually filled the can, sometimes the engineer. I didn't think the fire would start, then I went and put some coal-oil in it.

I have acted as a skipper on vessels such as the "Companion" for ten years. Whenever we refueled the main tanks we filled the small five-gallon cans also. The cans were carried ashore and filled by the station men who sell oil to the boats. Sometimes the engineer filled the cans, and sometimes the skipper. It is more the duty of the engineer than the skipper. The priming can was just a squirt can with a spout about seven or eight inches long. That generally had gasoline in it. I have served as a skipper on other boats and was their custom of keeping these cans of kerosene and gasoline in the engine-room, same as the "Companion." My duties as a skipper on those boats were practically the same as my duties on the "Companion."

Cross-examination (NICK SKANSI).

In previous years we had the same red and grey cans. I intended to use the coal-oil can and believe I did. The fire had been in the stove all day. The fire-box was 14 inches long and 7 or 8 inches deep. The stove was hot with fire in it when I put in coal. It would not burn and I went back to get coal-oil, I took off the lid and poured in a quarter of a cup, using a coffee cup. There was an explosion and fire. We filled the cans about eight or ten days before the accident. Other vessels carried gasoline

(Testimony of Nick Skansi.)

in her engine-room in tin cans. The cans were in plain sight of anybody coming into the engine-room.

The stove was cast iron and still hot. There was still fire in it when I put the coal in. I had one lid off when I put the oil in and the explosion happened. The other vessels which I was on carried gasoline, kerosene and oil in about the same way as the "Companion," were the "Catherine" and "Sophia Johnson," the "Blue Sea," and a good many other vessels I wasn't skipper on. The "Emancipator," the "Paul Pur," the "Welcome," the "Liberty Bell," the "Editor." I think I could name two hundred of them, all gas vessels. I have been buying fish for the last ten years and have boarded different vessels every day. Sometimes I would go aboard and eat meals. The "Emancipator" had a fifty standard; the "Welcome" a fifty Frisco standard; the "Liberty Bell" a [86] sixty-five Frisco standard; the "Editor" a forty Frisco Standard; I could tell you the engine in every boat on Puget Sound. I never had any other experience with an explosion. All boats carry heaters.

In December, 1925, there was a small fleet of about 28 or thirty-two boats fishing. The Steamboat Customs Inspector inspected these boats about every thirty days. They inspect for lights, fire extinguishers, boat papers, anchors, and for running lights, and if everything is in good condition and running order. The "Companion" was inspected about two weeks before she burned. The

(Testimony of W. J. Moloney.)

Inspectors were down through the engine-rooms and these gasoline, kerosene and oil cans were there.

TESTIMONY OF W. J. MOLONEY, FOR DEFENDANT.

W. J. MOLONEY, a witness for the defendant, testified:

I am a marine surveyor, in business independently. For ten years with the San Francisco Board of Marine Underwriters as a surveyor. I have no interest in the outcome of this suit. I have been master of boats, motor vessels, steamers and sailing vessels since 1904, on all oceans. I hold a Master's license on sail and steam vessels; also pilot's license for practically all ports in the United States. I have heard the testimony in this case. When I was working with the Board I had occasion to survey, repair and pass on such boats as the "Companion" and came to know their uses, methods of operation, their equipment, gear, etc. I am also familiar with the correct methods of the equipment and supplies, so far as safety is concerned, as recognized by the best operators and surveyors on Puget Sound. I heard John and Nick Skansi testify relative to the carriage of gasoline in tin cans in the engine-room of the "Companion." It is not considered safe to have gasoline in a can in any engine-room. It is generally the rule to have gasoline that is to be used in priming, in an individual tank, that is, a smaller tank than the tanks belonging to the vessel; a small one fitted with

(Testimony of W. J. Moloney.)

a faucet. The tank should be filled on deck, it should have a flange in the deck and you remove the flange and pour it down through a pipe. Gasoline in tin cans in an engine-room is unsafe, because when you are pouring from your five-gallon can into your priming can, there is always a chance of static electricity arising through the motion of the gasoline, with the result that the large can will explode. There is quite a little fume in all gasoline.

Cross-examination (W. J. MOLONEY).

Static electricity is generated when you pour gasoline from one can into another, unless they are in actual contact. The difference between the small tank and the larger tank is that the larger one is grounded on the side of the vessel so static electricity doesn't exist there. The fishing boats on the Sound usually carry their gasoline in small tanks fastened underneath the deck. I do not know that they carry it in [87] tin cans. I do not recollect the names of boats having such a tank with tap. I would not have passed any of them unless they were so fitted. About half of them were fitted and the other half were not. Whether the presence of the five-gallon can of gasoline on board a vessel would make it unseaworthy depends on where it was if it was going to be used and there would be a lot of other— It is not a proper practice to carry a five-gallon can of gasoline in the engine-room, because the engines might stop and there would be an occasion to pour that gasoline into the priming can.

(Testimony of W. J. Moloney.)

That is where you might have the spark. I don't know of a case of gasoline being poured out of a five-gallon can on a boat except that my brother was injured in an accident very much similar.

I could tell you the name of a boat that had the individual tank built in. I would say that about fifty-fifty of the boats had tanks built in and carried gas in cans. The presence of a five-gallon can of gasoline on board a vessel would not make it unseaworthy. It is not a proper practice by any means because the engines might stop, and there would be an occasion to pour that gasoline into the priming can, and then it comes back to my first answer there, where you might have that spark.

TESTIMONY OF JOHN M. SHERIFF, FOR DEFENDANT.

JOHN M. SHERIFF, a witness for the defendant, testified:

I am a marine surveyor now employed by the Board of Marine Underwriters of San Francisco; for eight years in that service, prior to that time surveyor to Lloyd's Register at Baltimore for three years. Before that five years machinery inspector for the Royal Indemnity Company in New York Seventeen and one-half years before that I was at sea as an engineer on the Atlantic and Indian Oceans. I hold American and British engineer's licenses, all oceans. I have heard the testimony, know the "Companion," surveyed her in 1925. I do not think it was good practice for the "Com-

(Testimony of John M. Sheriff.)

panion" to carry gasoline in five-gallon tin in her engine-room. No gasoline should be carried in any vessel where the fumes cannot escape to the open, clear air. It should be stored in the tank which can be filled from the deck, and have a pipe lead to carry the fumes up into the clear air. The danger of carrying gasoline in five-gallon cans in an engine-room, in a gasoline propelled vessel, is first, there is the danger that a certain amount is going to be spilled, and the woodwork soaked with gasoline from the filling of the small can from the five-gallon can. Then any indiscriminate smoking may result in trouble. On account of the construction of the vessel the fumes cannot get away very well, and are locked under the deck with an accumulation of gas.

I am familiar with the proper methods of equipping [88] and supplying of vessels such as the "Companion" for voyages upon Puget Sound. There is an approved practice and safe method of carrying gasoline in vessels such as the "Companion," which is to have a galvanized iron tank up under the beams in the engine-room, filled by a pipe through from the deck. There should be a drip pan under a small faucet to catch any seepage or overflow while filling a small can.

"Q. Would you say that equipping or supplying of such a vessel as the 'Companion' on a voyage from Seattle to Gig Harbor, with a five-gallon can of gasoline in her engine-room is safe or unsafe, and give your reason?"

Mr. PETERSON.—I think that is a conclusion for the Court.

(Testimony of John M. Sheriff.)

The COURT.—Objection overruled.

A. I would say it was a dangerous condition under any circumstances. First, as I said before, on account of the gasoline being spilled on to the woodwork, making it very susceptible to ignition, on account of any flame or match or cigarette, or anything, that might drop on it.”

TESTIMONY OF W. J. MOLONEY, FOR DEFENDANT (RECALLED).

W. J. MOLONEY, recalled by the Court, testified:

“Q. Mr. Moloney, you spoke of an explosion in which your brother was injured. You said it was similar. How long ago was that?

Mr. MOLONEY.—That was about twelve years ago, down in Manila, while they were filling a tank, filling the priming tank from another tank, and there was static electricity generated, and there was an explosion, and they were pretty badly blown up by it, and he was also filling a side light, and they got mixed up between coal-oil and gasoline.

Defendant rests.

TESTIMONY OF ARTHUR POWERS, FOR PLAINTIFF (RECALLED).

ARTHUR POWERS, a witness for the plaintiff, testified:

I am now working at shipbuilding. Have had experience on “Companion” and other fishing boats.

(Testimony of Arthur Powers.)

The "Companion" was a cannery tender, and my vessel was a fishing vessel solely. The vessels run from 28 to 40 and 45 feet, and the "Companion" was around 63 or 64 feet, but all are of the same general type. I was engineer on the "Companion" in December, 1925; have been Master and engineer on these vessels for eight or nine years, and familiar with duties of such Master. It is up to the engineer to look after the fuel and his tanks, and he informs the Master as to what his engine-room, tanks and supplies are needed, and the Master then goes to the oil dock and we pick up the fuel as we need it. We fueled the "Companion" at the Standard Oil Company plant in Seattle about a week or a little more before the fire. The red and lead can and can of engine oil were kept on the shelf against the athwart ships bulkhead between the engine-room and the fish hold. The clutch was about a foot ahead of the bulkhead, and the [89] shelf about 4 or 5 feet from the engine itself. The cans were filled every time they took fuel. Sometimes the Master attended to it and sometimes I. At the last filling the man at the Standard Oil docks filled the cans. I am not certain who attended to the filling. When we were amongst the fleet buying fish, we started the engine ten or 12 times a day, and gasoline was used every time we started by taking it from the large five-gallon can and pouring it into the square can and then priming the engine through a pet-cock on top of the engine. There is a little tap on top of the five-gallon

(Testimony of Arthur Powers.)

can which can be opened and closed. I daily mixed kerosene and lubricating oil, which was used on bearings and cylinders of the main engine. We used kerosene for igniters on the engine. It was also used for cleaning pipe around, and for lanterns and anchor lights. These were filled daily. From the time the fuel tank and cans were last filled and the fire, the boat had been operating steadily. We used gasoline out of the gasoline can, and kerosene out of the kerosene can, during that time. The gasoline can was colored red. The kerosene can grey. The contents on the day of the fire in these cans was kerosene in the grey can and gasoline in the red can. I know because I had used them.

I am familiar with the duties of Master of that class of boats and familiar with the things Nick Skansi did on the "Companion" during the month I was there. His duties were no different than the duties of any other Master. It is the duty of a Master on a fishing boat to have the boat refueled. I think I filled the small cans the last time we refueled, but I am not certain. During the interim between the time we refueled and I filled the cans the last time and until the fire, the boat was operated steadily and I used kerosene and gasoline out of the different cans daily during that time. Red is the standard color for gasoline and practically everywhere you go you have your gasoline can painted red. Kerosene cans are sometimes painted green or gray. A red can is always distinguished as your gasoline can. On the day of the fire, the

(Testimony of Arthur Powers.)

contents of the gray can was kerosene and the contents of the red can was gasoline. I know it because I used them.

The customs service never bothered us. It was the United States Customs Coast Guard Cutter. It boarded us about ten days before the fire. Two men came aboard, went over the vessel. One man went to the pilot-house, and examined the papers; the other man went through the vessel to look at the fire extinguishers and running lights and our equipment. I have been engineer on about five or six boats, and familiar with equipment in dozens of others. I knew one Diesel boat with small tanks, with a feed pipe running down from the deck to a small five-gallon tank permanently fixed.

All vessels that I was on practically used a similar practice regarding carrying of gasoline, kerosene and lubricating oil. I do not think much of the practice of carrying a drip pan. That is the way the "Vosberg" [90] burned up. They had a drip pan under the carburator. I am familiar with the explosive qualities of gasoline and kerosene and fuel oil. When the "Companion" left Seattle she was in good seaworthy condition for the trip to Gig Harbor.

Most of the vessels like the "Companion" carried gasoline in cans, and kept gasoline and kerosene in separate cans in the engine-room. If you have no flame in the stove, and have got it closed, and the stove is hot, kerosene poured on it will form a gas and immediately ignite. Then there are times when-

(Testimony of Arthur Powers.)

ever the stove is hot enough that it does ignite, and the gas will explode. There is practically no difference in the effect between gasoline and kerosene explosions when the gas is exploded from a gas formed by heat. I saw the "Companion" afterwards on a little point just south of Cove; she drifted in there and submerged in about twelve feet of water. There was practically no value left. The engine-room had for vents port holes on both sides, and the companionway with a door to the deck. The can for priming was a common copper squirt. One filling of the priming can will start the engine two or three times. Some times you have to prime oftener.

Cross-examination (ARTHUR POWERS).

I have no license as an engineer, although I have an operator's license to operate vessels up to 65 feet. I have no Master's license. The clutch of the engine was [91] within a foot or two of the bulkhead, the one on which the shelf was located. The cans were to one side of the clutch, maybe about two feet. The Coast Guardsmen did not make any examination of the engine-room. The only thing in the engine-room examined was the fire extinguisher. They are also looking for liquor.

When the explosion took place, I was steering the vessel. I could see the fire through the companionway up forward.

Redirect Examination (ARTHUR POWERS).

We intended to sleep in the fore-castle that night,

(Testimony of Arthur Powers.)

and I asked Skansi to look at the fire there. I was trying to put out the fire in the engine-room. You see, by the time I put out the fire on him, he came on deck, and his clothes and everything was all ablaze, and by the time I got the blanket from the pilot-house and got the fire off of him, and got him around to his senses, the fire got to the engine-room.

TESTIMONY OF DAVID M. WOOD, FOR PLAINTIFF.

DAVID M. WOOD, a witness for the plaintiff, testified:

I am a chemist, graduate of the Virginia Polytechnic Institute. I have had occasion to test kerosene and fuel-oil and lubricating oil for the flash point and explosive point. The flash point is the lowest temperature at which the vapors from oil will ignite momentarily. That is, the explosive point of the vapors. The flash point of gasoline is low, probably an average of forty or fifty degrees Fahrenheit. The flash point of standard kerosene is 110 degrees Fahrenheit. The effect of pouring kerosene in a stove which had a coal fire in it most all day, and that had burned down so that it had a few coals in the fire-box, would be to vaporize the kerosene rapidly, and if the stove was hot enough or a small flame was generated, it would detonate the gaseous mixture.

Gasoline will vaporize quicker and ignite at a lower temperature than kerosene. The latter

(Testimony of David M. Wood.)

poured into a stove heated such as shown by Nick Skansi would probably cause an explosion, such as described by him.

Cross-examination (DAVID M. WOOD).

I am familiar with a shipmate stove as described by Skansi. If the lid of such a stove was off, you would probably have a little better chance of getting an explosive mixture of gasoline and vapor and air. If the shipmate stove had coal in it, and the fire in it had gone out and there was more coal put in, and when it did not burn there was some oil put in or some fluid put into it and immediately there was an explosion which blew out the stove, firing the clothes of the person standing by, knocking him up the steps of the forecastle, that would not be any indication to me whether the liquid was gasoline or coal oil. If the stove was hot enough, the kerosene would explode just as quickly as gasoline. The gasoline would probably explode first, but you would probably have to have a stop watch to get the [92] difference. If you poured gasoline in a stove where there is a flame, it would immediately burn. It would not explode.

Redirect Examination (DAVID M. WOOD).

Kerosene heated to 110 degrees Fahrenheit would explode just as quickly as gasoline at 40 to 50. The explosive qualities are the same when they reach the flash point. There is a better explosive mixture by having the stove lid off on account of the oxygen.

(Testimony of David M. Wood.)

The flash point of gasoline of ordinary quality is around 40 to 50 degrees Fahrenheit.

Plaintiff showed the witness Sheriff, Plaintiff's Exhibit 1, Law Side, and had him identify the signature thereto as his. It is the survey of the "Companion" dated May 18, 1925.

The exhibit was introduced and received in evidence as Plaintiff's Exhibit One, Law Side.

TESTIMONY OF JOHN SKANSI, FOR PLAINTIFF (RECALLED).

JOHN SKANSI, a witness for the plaintiff, testified:

No part of the premium of \$621.50 on the policy has been offered to me by the insurance company or its agents. I paid \$461.08 of the premium.

Former Exhibit "B" in equity, is made Plaintiff's Exhibit 2, on the Law Side, defendant objecting as improper rebuttal. Overruled and exception taken.

Both parties rested, upon which the Court recalled John Skanso, who testified:

Behind the stove there was a place to sleep. In front of the stove there were shelves. The stove was two and a half feet from the bulkhead and two and a half feet from the shelves. The room was about two feet wide and about five feet long, and you could stand up straight in there, maybe a foot over my head. There were two openings out of there, one door to the engine-room, and one opening from the main deck.

TESTIMONY OF NICK SKANSI, FOR PLAINTIFF (RECALLED).

NICK SKANSI, for plaintiff, examined by the Court, testified:

When I poured this liquid in the stove I was standing on the front of the stove; between the stove and the door that I had gone in. The explosion just kind of knocked me out for almost a half a minute, and I find myself right against these steps. The opening that I came in and went out of is a regular door twenty or twenty-two inches wide or more, and about a 7 foot opening.

TESTIMONY OF ARTHUR POWERS, FOR PLAINTIFF (RECALLED).

ARTHUR POWERS, for plaintiff, examined by the Court, testified: [93]

“The COURT.—What I had in mind was whether there was more than one opening out of the forecastle?

A. There was an opening through the bulkhead; there was a door went through the bulkhead, and there was an opening through the engine-room, supposed to go out of the engine-room. You could go from the deck into the engine-room and into the forecastle, and then there was a companionway with a booby hatch on it, up forward, A booby hatch is one of these rounded affairs.”

The booby hatch was open because Skansi came out of there. I was at the steering wheel on the

(Testimony of Arthur Powers.)

pilot-house, and I saw the flash through the booby hatch. When I went down to put the fire out the door between the engine-room and the forecastle was open. There are port openings in the engine-room and forecastle both. In the forecastle there were two on each side. I do not know whether they were open in the forecastle.

TESTIMONY OF JOHN M. SHERIFF, FOR
DEFENDANT (RECALLED).

JOHN M. SHERIFF, recalled for the defendant, testified:

I heard Mr. Woods testify relative to gasoline and coal-oil or kerosene and their flash points. I am familiar with shipmate stoves, coal-oil and gasoline and the respective qualities for explosibility, particularly the uses for cleaning or heating, doing repairs around machinery. I find that if I take rags, soak them in kerosene, I can apply a match to them without any danger. Supposing I have a piece of machinery that I have to heat and put some rags around it, and put some kerosene on, and strike a match and light it, I am not afraid of it at all. I would not do that with gasoline, I would not soak a rag in gasoline and apply a match to it. I know that men have used kerosene to quicken a fire, I have done it myself, with the result just a quick flame. I do not know the result if I poured gasoline in, although I had one experience. I had a quart spout can of gasoline and in heating rags to heat a small piece of machinery, I have made a

(Testimony of John M. Sheriff.)

throw with the gasoline and all that was left in my hand was the handle of the can. The whole can exploded. I could do that with kerosene, but I could not with gasoline.

“Q. From the testimony in this case, and from your experience, do you gather any opinion as to whether it was gasoline or kerosene that was poured in that stove?”

Mr. PETERSON.—If the Court please I object. The witness has not shown himself qualified to testify.

The COURT.—Objection overruled.

A. From the description I have of it, I think it was gasoline.”

Upon which both sides rested, and the defendant immediately announced: “I wish again to challenge the sufficiency of the evidence and move for a dismissal.

The COURT.—The motion is noted, and will be considered in the argument.”

The motion was overruled and exception allowed.
[94]

The foregoing statement of the evidence herein is hereby allowed, and certified to be a full, true and correct statement of the substance of the evidence herein.

Those portions of the statement of the evidence reproduced in the exact words of the witnesses, were so reproduced upon the application of the parties and the direction of this Court.

Done in open court this 12th day of July, 1929.

EDWARD E. CUSHMAN,
Judge.

O. K.—CHARLES T. PETERSON,
Attorney for Plaintiff.

O. K.—COSGROVE & TERHUNE,
Attorneys for Defendant.

[Indorsed]: Filed Jul. 12, 1929. [95]

NOTICE OF FILING OF STATEMENT OF
EVIDENCE.

To John Skansi, Plaintiff, and His Attorneys, Bates
& Peterson:

You and each of you will please take notice that the defendant above-named has lodged with the Clerk of the above-entitled court for your examination and approval and certification by the Court, its statement of the evidence herein; that such statement will be presented to the Judge of the above-entitled court at the courtroom in the Federal Building, Tacoma, Washington, on the 8th day of July, 1929, at ten o'clock A. M., for approval and certification.

Dated this 25th day of June, 1929.

COSGROVE & TERHUNE,
Attorneys for Defendant.

Recd. copy above notice this 25 day of June, 1929.

CHARLES T. PETERSON,
Attorney for Plaintiff.

[Indorsed]: Filed Jun. 25, 1929. [96]

PETITION FOR ALLOWANCE OF APPEAL,
AND ORDER FIXING APPEAL AND SUPERSEDEAS BOND.

To the Honorable EDWARD E. CUSHMAN, Judge
of the Above-entitled Court:

Come now the defendant above named, by its attorneys, and respectfully shows that on February 11, 1929, the above-entitled court entered an interlocutory decree herein in favor of the said plaintiff and against the said defendant, and did, on June 25, 1929, enter a final decree herein in favor of the said plaintiff and against the said defendant.

Your petitioner, feeling itself aggrieved by the said decree (including said interlocutory decree), has heretofore served and does herewith file this, its notice of appeal from said decree (including said interlocutory decree) and the rulings of the Court theretofore entered in the trial of said cause, to the United States Circuit Court of Appeals, for the Ninth Circuit, under the laws of the United States in such cases made and provided, and herewith petitions the court for an order allowing said appeal.

WHEREFORE, your petitioner prays that said appeal to said court be allowed, and that an order be made fixing the amount of security to be given by appellant conditioned as the law directs, and upon giving such bond as may be required, that all further [97] proceedings may be suspended until

the determination of said appeal by said Circuit Court of Appeals.

COSGROVE & TERHUNE,
Attorneys for Petitioner and Appellant.

Appeal allowed this 8th day of July, 1929, and appeal and supersedeas bond fixed at \$15,000.00.

Upon the making and filing of such bond, approved by the Court all further proceedings shall be suspended until the determination of said appeal by the said Circuit Court of Appeals.

Dated at Tacoma this 8th day of July, 1929.

EDWARD E. CUSHMAN,
Judge.

Service of the foregoing notice of appeal, petition for allowance of appeal and order fixing appeal and supersedeas bond acknowledged this 8th day of July, 1929, and appeal and supersedeas bond in the sum of \$15,000.00 is hereby approved.

CHARLES T. PETERSON,
Attorney for Plaintiff and Appellee.

[Indorsed]: Filed Jul. 8, 1929. [98]

ASSIGNMENTS OF ERROR.

Comes now the defendant above named, and makes the following assignment of errors upon which it will rely upon the prosecution of its appeal in the above-entitled cause, from the interlocutory and final decrees entered herein by the above-en-

titled court on respectively February 11, 1929 and June 25, 1929:

I.

Upon the trial of said cause by the above entitled court, the defendant, at the close of plaintiff's case, challenged the sufficiency of the evidence and moved the court for a dismissal of said action. The motion was denied and an exception taken, which ruling is hereby assigned as error.

The evidence was insufficient for the following reasons:

(a) Plaintiff failed to prove any agreement on the part of the defendant (prior to the issuance of the said policy on March 16, 1925) to execute and issue a policy describing John Skansi therein as a beneficiary thereunder, or to insure any interest of John Skansi in and to said vessel (if any he had).

(b) Plaintiff failed to prove any agreement on the part of the defendant to make the October 19, 1925, endorsement describe John Skansi as a beneficiary under said policy, or to insure any interest of John Skansi in and to said vessel (if any [99] he had).

(c) Plaintiff failed to prove any mistake, inadvertence or oversight in the drafting or execution of the policy of insurance as written and issued on March 16, 1925.

(d) Plaintiff failed to prove any mistake, inadvertence or oversight in the drafting or execution of the October 19, 1925, endorsement.

II.

Upon the trial of said cause by the above-entitled court, the defendant, at the close of the trial (exclusive of the hearing upon the affirmative defense) challenged the sufficiency of the evidence and moved the court for a dismissal of said action. The motion was denied and an exception taken, which ruling is hereby assigned as error.

The evidence was insufficient for the same reasons heretofore given in support of Assignment of Error No. 1.

III.

On February 11, 1929, the Court entered herein its interlocutory decree declaring a reformation of said policy of insurance, making the plaintiff, John Skansi, an assured under said policy "prior to and at the time of the destruction of the 'Companion' December 30, 1925." The evidence being insufficient as hereinbefore stated, and the defendant duly excepting, said ruling and decree is assigned as error.

IV.

At the close of the trial of said cause (including the affirmative defense) the said defendant challenged the sufficiency of the evidence and moved for a dismissal of the cause. The motion was denied and an exception taken, and the defendant now assigns said ruling as error. The evidence was insufficient for [100] the same reasons hereinbefore given in support of Assignment of Error No. 1.

V.

On June 25, 1929, the Court entered herein its

final decree confirming said interlocutory decree, and entering up a money judgment in favor of said plaintiff and against the said defendant. Defendant duly excepting, now assigns said ruling and decree as error, the reasons therefor being those hereinbefore given in support of Assignment of Error No. 1.

WHEREFORE, defendant prays that said decrees of said court be reversed.

COSGROVE & TERHUNE,
Attorneys for Defendant (Appellant).

[Indorsed]: Filed Jul. 8, 1929. [101]

APPEAL AND SUPERSEDEAS BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, Globe and Rutgers Fire Insurance Company, a corporation of the State of New York, as principal, and Royal Indemnity Company, a corporation of the State of New York, as surety, are held and firmly bound unto John Skansi, in the sum of Fifteen Thousand (\$15,000.00) Dollars, to be paid to the said John Skansi, to which payment well and truly to be made we bind ourselves, our successors and assigns, by these presents.

Sealed with our seals and dated this 8th day of July, 1929.

WHEREAS, lately at a regular term of the District Court of the United States, for the Western District of Washington, Southern Division, sitting

at Tacoma, Washington, in said District, in a suit pending in said court between the said John Skansi, as plaintiff, and the said Globe and Rutgers Fire Insurance Company, as defendant, final decree was rendered against the said defendant, Globe and Rutgers Fire Insurance Company, for the sum of eleven thousand three hundred (\$11,300.00) dollars, with interest thereon at the rate of 6% per annum from January 26, 1926, to June 25, 1929, in the sum of \$2,301.36, making a total of thirteen thousand six hundred one and 36/100 (\$13,601.36) dollars, together with the costs of suit herein to be taxed, and the said defendant [102] has served and filed (according to statute) in the Clerk's office of said court, a notice of appeal from said decree, to the United States Circuit Court of Appeals, for the Ninth Circuit, and has obtained a citation directed to the said John Skansi, citing him to be and appear before the said United States Circuit Court of Appeals to be holden at San Francisco, in the State of California, according to law, within thirty (30) days from the date hereof.

Now, the condition of the above obligation is such that if the said Globe and Rutgers Fire Insurance Company shall prosecute its appeal to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

GLOBE AND RUTGERS FIRE INSURANCE COMPANY.

By HOWARD G. COSGROVE,

Its Attorney.

ROYAL INDEMNITY COMPANY.

[Seal] By M. W. NICOSON,

Its Attorney-in-fact.

O. K. as to form, surety and amount.

CHARLES T. PETERSON,

Attorney for Plaintiff.

The foregoing is approved as an appeal and supersedeas bond this 8th day of July, 1929.

HOWARD E. CUSHMAN,

Judge.

[Indorsed]: Filed Jul. 8, 1929. [103]

CITATION.

To John Skansi, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals, for the Ninth Circuit, at the city of San Francisco, State of California, thirty (30) days from and after the day this citation bears date, pursuant to an order allowing an appeal filed and entered in the Clerk's office in the District Court of the United States of America, for the Western District of Washington, Southern Division, from the decree made and entered in the above-entitled cause on June 25, 1929 (including the interlocutory decree made and entered therein on February 11, 1929), to show cause, if any there be, why the said decree entered against the said defendant should not be corrected, and why justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD E. CUSHMAN, Judge of said District Court, this 8th day of July, 1929.

EDWARD E. CUSHMAN,
Judge.

Copy of within citation received, and due service of same is acknowledged this 8th day of July, 1929.

CHARLES T. PETERSON,
Attorney for Plaintiff (Appellee). [104]

ORDER RESPECTING TRANSMISSION OF
ORIGINAL EXHIBITS.

Upon stipulation and request of counsel for both parties hereto, the Clerk of this court is hereby directed to transmit to the Circuit Court of Appeals, as a part of the record on appeal herein, the originals of all exhibits offered upon the trial hereof.

Done in open court this 20 day of July, 1929.

NETERER,
Judge.

O. K.—CHARLES T. PETERSON,
Attorney for Plaintiff.
COSGROVE & TERHUNE,
Attorneys for Defendant.

[Indorsed]: Filed Jul. 22, 1929. [105]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please prepare and return in behalf of the defendant (appellant), according to the statutes and rules of said court, a transcript of the record herein, including:

1. Amended complaint.
2. Order of removal.
3. Docket entry showing filing with Clerk of District Court amended complaint, petition for removal, bond on removal, order of removal, and notice to plaintiff of removal.
4. Answer.
5. Reply.
6. Order transferring cause to the equity side.
7. Interlocutory decree of Feb. 11, 1929.
8. Stipulation waiving jury.
9. Memorandum opinion of Court on plaintiff's right to have policy of insurance reformed.
10. Memorandum opinion of Court upon the merits, after reformation of insurance policy.
11. Decree of June 25, 1929.
12. Statement of the evidence.
13. Notice of lodgment of statement of evidence with clerk.
14. Petition for allowance of appeal, order of allowance and order fixing appeal and supersedeas bond.
15. Assignment of errors.
16. Bond and approval.
17. Citation.

18. Order directing transmittal to Circuit Court of original exhibits, as part of record on appeal.
19. Clerk's certificate.
20. This praecipe.

COSGROVE & TERHUNE,
Attorneys for Defendant (Appellant). [106]
Service of copy within admitted July 12th, 1929.

CHARLES T. PETERSON,
Atty. for Plaintiff.

[Indorsed]: Filed Jul. 12, 1929. [107]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, Ed M. Lakin, Clerk of the District Court of the United States for the Western District of Washington, do hereby certify and return that the foregoing pages numbered from one to 108 inclusive, are a full, true and correct transcript of so much of the record and proceedings in the case of John Skansie, Plaintiff, *versus* Globe & Rutgers Fire Insurance Company, a corporation, Defendant, Cause No. 6007, in said District Court, as are required by praecipe of counsel filed and shown herein, and as the originals thereof appear on file and of record in my office at Tacoma, in said District.

I further certify that I hereto attach and trans-

mit the original citation in said cause with acceptance of service thereon.

I further certify that I attach and forward herewith, the exhibits of plaintiff, No. "A" to "K," inclusive, and Defendant's Exhibits Nos. 1 to 14 inclusive, said exhibits being transmitted in accordance with the order of Court thereon filed in said cause and shown herein.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the appellant herein for making the record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's Fees (Act Feb. 11, 1925) for making record and return, 262 folios @ 15¢ per folio	\$39.30
Seal50
Appeal	5.00

ATTEST my hand and the seal of said District Court, at Tacoma, in said District this 2d day of August, A. D. 1929.

[Seal]

ED M. LAKIN,
Clerk.

By Alice Huggins,
Deputy. [108]

[Endorsed]: No. 5900. United States Circuit Court of Appeals for the Ninth Circuit. Globe and Rutgers Fire Insurance Company, a Corporation, Appellant, vs. John Skansi, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed August 5, 1929.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Frank H. Schmid,
Deputy Clerk.

